86 1530

NO. ____

Supreme Court, U.S.
FILED
MAR 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

Aetna Casualty and Surety Company, a Corporation; and Doris Geneva Greer, as Administratrix DBNCTA of the Estate of Charles Furman Greer, Deceased,

Petitioners,

vs.

Security Forces, Inc. and Security Insurance Company of Hartford,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

N. Heyward Clarkson, III
Counsel of Record
For the Petitioners
Post Office Box 10589
Greenville, South Carolina 29603
Phone (803) 271-9580

106PP

QUESTION PRESENTED FOR REVIEW

Does the "Full Faith and Credit" clause of the United States Constitution require the South Carolina Supreme Court to follow the holding of a New York State Court involving the same parties and identical issues?

PARTIES TO THE PROCEEDING BELOW

(1) The Aetna Casualty & Surety Company, a Corporation[1]

(2) Doris Geneva Greer, as Administratrix D.B.N.C.T.A. of the Estate of Charles Furman Greer, Deceased

(3) Security Forces, Inc.

(4) Security Insurance Company of Hartford

1. The Aetna Casualty and Surety Company is a wholly-owned subsidiary of Aetna Life and Casualty Company, which is a publically owned insurance holding company, the shares of which are traded on the New York Stock Exchange. The outcome of this litigation will not materially affect the financial condition of either The Aetna Casualty and Surety Company or any subsidiary or affiliates thereof, nor will it affect the ability of the company to pay the insurance claims of the policyholders.

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

Aetna Casualty and Surety Company, a Corporation; and Doris Geneva Greer, as Administratrix DBNCTA of the Estate of Charles Furman Greer, Deceased,

Petitioners,

vs.

Security Forces, Inc. and Security Insurance Company of Hartford,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF SOUTH CAROLINA

TABLE OF CONTENTS

	PAGE
Question Presented	1
Parties to the Proceeding Below	2
Table of Contents	4
Table of Authorities	5
Opinions Below	6
Statement of Jurisdiction	7
Constitutional Provision	8
Statement of the Case	9
Argument	11
Appendix	14

TABLE OF AUTHORITIES

CASES	PAGE
Magnolia Petroleum Company vs. Hunt, 320 U.S. 430 (1943), overruled on other grounds, 448 U.S. 286 (1980)	11
Milliken v. Meyer, 311 U.S. 457 (1940).	11
Pink v. A.A.A. Highway Express, Inc., 314 U.S. 201 (1941).	11
Underwriters National Assurance Co. v. North Carolina Life and Accident and Health Ins. Guaranty Association, et al., 455 U.S. 691 (1982).	12

CONSTITUTIONAL & STATUTORY PROVISIONS

Article IV, Section 1 of the United States Constitution.	8, 11
28 U.S.C. § 1257(3)	7
28 U.S.C. § 2101(c)	7

OPINIONS BELOW

The denial of the petition for writ of certiorari by the South Carolina Supreme Court entered on December 9, 1986; the denial of the motion for rehearing by the South Carolina Court of Appeals; and the opinion and amended order of the Circuit Court of Spartanburg County, South Carolina, are set out in the Appendix hereto. The decision of the South Carolina Court of Appeals is reported as Aetna Casualty and Surety Company, a Corporation; and Doris Geneva Greer, as Administratrix DBNCTA of the Estate of Charles Furman Greer, Deceased, Respondents v. Security Forces, Inc. and Security Insurance Company of Hartford, Appellants, 290 S.C. 20, 347 S.E.2d 903 (1986).

STATEMENT OF JURISDICTIONAL GROUNDS

The jurisdiction of the United States Supreme Court is hereby invoked, based upon the following.

(1) The decree of the Supreme Court of South Carolina, which is sought to be reviewed, is dated December 9, 1986 and was entered on December 9, 1986.

(2) 28 U.S.C. § 1257(3) confers jurisdiction upon the United States Supreme Court to review the South Carolina Supreme Court decree by writ of certiorari and provides in pertinent part as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
> (. . .)
> (3) By writ of certiorari (. . .) where any title, right, privilege or immunity is specially set up or claimed under the Constitution (. . .) of the United States.
>
> 28 U.S.C. § 1257(3), (1970).

(3) 28 U.S.C. § 2101(c) provides:

> (c) . . . (A)ny writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety (90) days after the entry of such judgment or decree.
>
> 28 U.S.C. § 2101(c).

As this petition for writ of certiorari is hereby filed within ninety (90) days of December 9, 1986, the date on which the decree to be reviewed was entered, the jurisdiction of this Court is timely invoked.

RELEVANT CONSTITUTIONAL PROVISION

This case involves the following Constitutional provision:

Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof.

Article IV, Section 1 of the United States Constitution.

STATEMENT OF THE CASE

In July, 1970, Charles Furman Greer was an employee of Security Forces, Inc., which, by contractual arrangement, provided security services to Hystron Corporation located in Spartanburg County. In the contract for guard services, Security Forces agreed to hold Hystron harmless for any claims resulting from the operations of Security Forces and secured liability insurance for that purpose from Security Insurance Company.

On July 27, 1970, Hystron directed Greer to use a Hystron-owned automobile to drive a Hystron employee (Hans Biener) and his family to the airport. This was one of Greer's usual duties and he was performing pursuant to the contract between Security Forces and Hystron. On the way to the airport, the Hystron automobile ran into a bridge abutment. Mrs. Biener was killed and Mr. Biener and his children were injured. Mr. Greer also died as a result of the injuries received in the accident.

At the time of the accident Aetna had in effect an automobile liability insurance policy in which Hystron was the named insured and the automobile driven by Greer was listed as an insured vehicle on this policy.

Following institution of New York legal proceedings by the Biener family on account of the accident that occurred while Mr. Greer was performing his duties as a Security Forces employee, Hystron and Security Forces agreed to submit to the New York court the issue of which of them would be liable for the claims that the Bieners made. The New York court determined that the $450,000.00 for which Hystron and Security Forces had agreed to settle the Biener claims should be paid by Hystron's insurer, Aetna; and that Security Forces and its insurer, Security Insurance, should reimburse Aetna for the amount paid to the Bieners. Thus, Aetna paid to the Bieners the amount of the settlement, and Security Insurance reimbursed that amount to Aetna.

On October 3, 1983, Security Forces, Inc. filed an action in the Court of Common Pleas for Spartanburg County against the Estate for indemnity based upon common law principles of indemnity between an employee and employer. The Aetna policy is the only undistributed asset of the Estate. That action is being held in abeyance pending the outcome of this action.

This declaratory judgment action was filed by Petitioners on January 18, 1984 in the Court of Common Pleas for Spartanburg County. In this action, the Petitioners seek a judgment declaring that Petitioners have no duty and cannot be liable to Respondents in connection with the pending lawsuit.

In Security Forces' indemnity action against the Greer Estate, the lawsuit that underlies this declaratory judgment action, Security Forces seeks to recover from the Estate precisely what the New York Court ordered Security Forces and Security Insurance to pay to Aetna. Since the Greer Estate had been closed for many years, it presently has no assets except for the possibility that the Aetna insurance policy issued to Hystron constitutes one. Thus, the underlying indemnification lawsuit seeks reimbursement from Aetna, albeit through the Estate, of the same liability that the courts of the State of New York ordered Security Forces and Security Insurance to pay to Aetna.

The Petitioners raised the question at issue here in their original complaint, (Appendix, pages 52-53), their amended complaint (Appendix, pages 67-68), and their memorandum in support of their motion for summary judgment (Appendix, pages 72-73).

The Honorable James B. Stephen granted summary judgment to the Petitioners. Both his original order dated July 20, 1984, and his amended order dated August 22, 1984, held that the full faith and credit clause of the United States Constitution required the South Carolina Courts to follow the New York Courts' ruling. (See Judge Stephen's original order, Appendix, pages 23-25. See also Judge Stephen's amended order, Appendix, pages 34-36).

In the Petitioner's brief considered by the South Carolina Court of Appeals, dated February 15, 1985, the Petitioners again argue that the full faith and credit clause of the United States Constitution prohibits the South Carolina Courts from overturning the decision of the New York Court. (See Petitioners brief, Appendix, pages 92-93).

The South Carolina Court of Appeals reversed the trial court, stating that the full faith and credit clause did not bar such a decision, because the New York appellate decision deleted the trial court's order to the extent it limited future actions between Security Forces and the Greer estate.

The Petitioners again raised the issue in their petition for rehearing submitted to the Court of Appeals, dated August 13, 1986. (See Appendix, pages 96) The Court of Appeals denied the petition for rehearing on August 20, 1986. (Appendix, page 44)

The Petitioners again raised the issue in their petition for a writ of certiorari to the South Carolina Supreme Court. (See Appendix, pages 100-101) The South Carolina Supreme Court denied the petition for writ of certiorari on December 9, 1986. (Appendix, page 15)

ARGUMENT

Does the "full faith and credit" clause of the United States Constitution require the South Carolina Supreme Court to follow the holding of a New York State Court involving the same parties and identical issues?

The practical outcome of the New York judgment was that the Bieners received money from Aetna because of their claim arising from the operations of Security Forces at Hystron, and Aetna was reimbursed by Security Insurance, who agreed to be liable for such claims. While the New York appellate court modified the judgment of the trial court by deleting from it "the limitations imposed on future actions derived from the fourth and fifth party actions," this modification changed in no way the judgment of the trial court that Aetna was entitled to be indemnified by Security Insurance for the amount that Aetna was ordered to pay the Biener family. Thus, Aetna, Hystron, Security Forces, and Security Insurance are all bound in the State of New York by a valid judgment rendered there, and that judgment places liability to Aetna on Security Insurance.

Under the "full faith and credit" clause of the United States Constitution, art. IV, section 1, that valid New York judgment has precisely the same effect in South Carolina as it does in New York. Whether the South Carolina courts agree with the judgment is irrelevant: when a judgment rendered by a court having jurisdiction of the cause and the parties is challenged in another state, the courts in the other state are precluded from "any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." Milliken v. Meyer, 311 U.S. 457, 462 (1940). "Because there is a full faith and credit clause, a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into judgment." Magnolia Petroleum Company v. Hunt, 320 U.S. 430, 440-41 (1943), overruled on other grounds, 448 U.S. 286 (1980). The purpose of the full faith and credit clause has been recognized by this Court. "It was the purpose of that provision to preserve rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in others." Pink v. A.A.A. Highway Express, Inc., 314 U.S. 201 (1941).

Nevertheless, Security Insurance, in using the Estate to recover from Aetna, attempts to challenge the validity of Aetna's

right that ripened into judgment in the courts of New York. The real party in interest, in both the New York action and the South Carolina actions, is Aetna, not the Estate. In the action underlying this one, Security Insurance, through Security Forces, seeks to recover from Aetna, albeit through the Estate, what the New York Court ordered Security Insurance to pay to Aetna. Thus, Security Insurance seeks to undo the valid judicial proceedings of the State of New York. This is precisely the evil that the full faith and credit clause was designed to prevent. Since the South Carolina Supreme Court did not apply the full faith and credit clause and honor the New York decree, Security Insurance has succeeded in nullifying the valid judicial proceedings of a sister state, unless this Court holds otherwise.

Aetna, of course, is aware of Respondents' argument that the New York appellate decision leaves open the possibility of an action against the Estate. This is correct and was necessary since that court lacked jurisdiction to bind the Estate. That court did not, however, say that Aetna was liable to Security Insurance through the Estate. It concluded the opposite, that Security Insurance is liable to Aetna.

This case is not unlike that of Underwriters National Assurance Co. v. North Carolina Life and Accident and Health Ins. Guaranty Association, et al., 455 U.S. 691 (1982). In Underwriters, the Indiana rehabilitation court held that the North Carolina Association had no rights to a deposit posted in North Carolina but that the deposit was an asset of Underwriters. The North Carolina courts refused to honor the Indiana court's decision regarding rights to the deposit, holding the Indiana court did not have in personam jurisdiction over the North Carolina officials or policyholders involved. This Court held that such refusal constituted a violation of the full faith and credit clause. In so holding, this Court noted that the Indiana court had personal jurisdiction over all parties necessary to the court's determination as to the rights of the parties to the deposit. This Court further noted that the Indiana court fully and fairly considered whether it had subject-matter jurisdiction to settle the claims to the deposit.

In this case, the New York trial court held that it had no jurisdiction over the Greer Estate. However, the New York courts had jurisdiction over the parties before it to determine the rights and duties of the parties as to indemnification. The New York Court held that Aetna is not obligated to reimburse Respondents, but that Respondents must indemnify Aetna. This ruling was not disturbed by the New York Appellate division. As such, this issue

has been finally resolved by the New York Courts and is entitled to full faith and credit in South Carolina.

For the reasons stated above this Court should hold that the full faith and credit clause of the United States Constitution mandates a holding that neither Aetna nor, derivatively, the Estate, is liable to Security Forces or its insurer, Security Insurance, in any action arising from the 1970 automobile accident.

RESPECTFULLY SUBMITTED,

N. HEYWARD CLARKSON, III
Counsel of Record
For the Petitioners
Post Office Box 10589
Greenville, South Carolina 29603
Phone (803) 271-9580

APPENDIX

		Page
(1)	Order Below	15
(2)	Related Decisions Below	
	(a) Order of South Carolina Trial Court	16-25
	(b) Amended Order of South Carolina Trial Court	26-36
	(c) Opinion of South Carolina Court of Appeals	37-43
	(d) Denial of Petition for Rehearing by South Carolina Court of Appeals	44
(3)	Related Procedures Below	
	(a) Complaint of the Petitioners	45-61
	(1) Opinion of New York Trial Court	54-59
	(2) Opinion of New York Appellate Division	60-61
	(b) Amended Complaint of the Petitioners	62-68
	(c) Memorandum in Support of Petitioners' Motion for Summary Judgment	69-76
	(d) Petitioners' Brief to the South Carolina Court of Appeals, filed in the Supreme Court	77-93
	(e) Petitioners' Petition for Rehearing to the South Carolina Court of Appeals	94-96
	(f) Petitioners' Petition to the South Carolina Supreme Court for a Writ of Certiorari	97-105

The Supreme Court of South Carolina

December 9, 1986

N. Heyward Clarkson, III, Esquire
Messrs. Rainey, Britton, Gibbes
& Clarkson
P.O. Box 10589, F.S.
Greenville, South Carolina 29603

Re: Aetna Casualty & Surety Co., etc., et al. v. Security Forces, Inc., et al.

Dear Mr. Clarkson:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above matter:

"Petition for Writ of Certiorari denied.

s/ J.B. NESS C.J.
For the Court

December 9, 1986."

By copy of this letter we are asking counsel of record what disposition they would have us make of the extra copy of the record in this action. If we have not heard from them to the contrary, we will destroy the record on December 19, 1986.

Very truly yours,

Brenda F. Shealy
Deputy Clerk

BFS/djp

CC: John E. Johnston, Esquire
Gwendolyn G. Embler, Esquire
Bradford N. Martin, Esquire
The Honorable Reba D. Mims
West Publishing Company

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Aetna Casualty & Surety	)	
Company, a corporation; and	)	
Doris Geneva Greer, as	)	
Administratrix D.B.N.C.T.A.	)	
of the Estate of Charles	)	
Furman Greer, Deceased,	)	ORDER
	)	
Plaintiffs,	)	84-CP-42-98
	)	
—vs—	)	
Security Forces, Inc.; and	)	
Security Insurance Company	)	
of Hartford,	)	
	)	
Defendants.	)	

This case is before the court on the plaintiffs' motion for summary judgment. The suit is one for declaratory judgment in which the plaintiffs request that this court declare that they cannot be held liable to the defendants in any action arising from an automobile accident that occurred on July 27, 1970. Presently pending in the Court of Common Pleas for Spartanburg County is such an action by the defendant, Security Forces, Inc., in which Security Forces seeks indemnity from the estate of Charles Furman Greer for the amounts that Security Forces, through its insurer, the defendant, Security Insurance Company of Hartford, paid as a result of the automobile accident. The court grants the plaintiffs' motion for summary judgment and hereby declares that neither plaintiff can be held liable to either defendant in any action arising from the aforesaid automobile accident.

FINDINGS OF FACT

In support of their motion for summary judgment, the plaintiffs filed with the court one affidavit and their request for admissions along with the defendants' response to the request. These materials, in particular the documents whose genuineness is admitted as a part of the request for admissions, establish the undisputed facts of this case.

On July 27, 1970, a single-car accident occurred at the intersection of Interstates 85 and 26 near Spartanburg, South Carolina. Six passengers and one driver were riding in the car at the time of the accident. All six passengers were members of the Hans Biener family, which was on its way to the airport to leave Spartanburg and move to New York City. All of the members of the Biener family were injured in the accident, and Mrs. Hedwig Biener died shortly after the accident. The driver of the car, Charles Furman Greer, died several months after the accident from injuries received in it.

Mr. Greer was employed in 1970 by Security Forces, Inc. as a security guard. Mr. Biener was an employee of Hystron Fibers in Spartanburg. Pursuant to a contract between Security Forces and Hystron by which Security Forces agreed to provide security guard services to Hystron, Mr. Greer was stationed at the Hystron Fibers plant. At the time of the accident, he was using a Hystron car to drive the Biener family to the airport. Driving Hystron vehicles was part of the usual duties of the Security Forces guards who worked at Hystron.

Because of the injuries received by the members of the Biener family in the accident, Mr. Biener, as representative of his deceased wife, as guardian of his minor children, and for himself, instituted on November 16, 1971, an action in the State of New York for the wrongful death and injuries received in the accident. He named as the defendant his employer, Hystron Fibers. On April 2, 1974, Hystron Fibers filed a third-party complaint against Security Forces seeking to require that company to reimburse Hystron for any damages that it was required to pay to the Biener family.

Eventually, Hystron and Security Forces reached a settlement with Mr. Biener. Under the terms of the settlement, Mr. Biener received $450,000.00. Hystron and Security Forces also agreed to submit to the New York court on stipulations the question of which of them would be liable for paying the $450,000.00 to the Biener family.

On April 6, 1978, the New York court held that Hystron and/or its insurer, Aetna Casualty and Surety Company, was liable for the $450,000.00, plus interest. The court also held, however, that Security Forces, the third-party defendant, and/or its insurer, Security Insurance Company of Hartford, must reimburse Hystron and/or Aetna for the amount paid to the Biener family. The opinion of the New York trial court is before this court as a part of the plaintiffs' request for admissions. As that opinion indicates, the trial court based Hystron's and Aetna's rights to indemnity on

three grounds: (1) The hold harmless clause in the contract for security guard services between Hystron and Security Forces; (2) the hold harmless agreement included in the certificate of insurance delivered by Security Forces to Hystron; and (3) the paragraph of the contract between Security Forces and Hystron that required Security Forces to provide automobile liability insurance for all vehicles owned, hired, or used by Security Forces in conducting its business with Hystron. This contract for guard services and the certificate of insurance are also before this court as parts of the defendants' response to the plaintiff's request for admissions.

On December 23, 1980, the Appellate Division of the Supreme Court of the State of New York affirmed the judgment of the trial court with some modifications. The result of the Appellate Division's action was nonetheless to require Hystron and/or Aetna to pay the Biener family and to require Security Forces and/or Security Insurance Company to reimburse Hystron and/or Aetna for that amount paid. The opinion of the Appellate Division is also before this court as a part of the plaintiffs' request for admissions and the defendants' response thereto.

On June 22, 1981, Security Forces and/or Security Insurance Company paid the amount of the judgment with interest. The amount of the payment was $540,775.10. On October 3, 1983, Security Forces filed in the Court of Common Pleas for Spartanburg County the aforementioned lawsuit related to the instant case. In that suit, Security Forces seeks reimbursement from the estate of Charles Furman Greer of the money that Security Forces or its insurer paid in satisfaction of the judgment in New York, plus the sums expended in the defense of that action, plus interest on these amounts. The basis for Security Forces' cause of action is common-law indemnity.

Because Mr. Greer died in 1970, his estate is now closed. The administratrix of the estate, Doris Geneva Greer, has called upon the Aetna Casualty and Surety Company to defend the action brought against the estate of her deceased husband. Since the Aetna policy is the only possible asset of the closed estate, the companion case is obviously one in which Security Forces seeks reimbursement from Aetna for the amounts that the courts of the State of New York ordered that it pay to Hystron and/or Aetna.

On July 9, 1984, this court heard arguments on the plaintiffs' motion for summary judgment in the instant action for declaratory judgment. Because no disputed facts exist in this matter and judgment is appropriate as a matter of law, this court grants the plaintiffs' motion for summary judgment and declares as a matter

of law that neither Aetna nor Mr. Greer's estate can be held liable to Security Forces or Security Insurance Company in any action arising from the automobile accident of July 27, 1970.

CONCLUSIONS OF LAW

The plaintiffs presented to the court five separate bases for granting their motion for summary judgment. Although it does so to varying degrees, this court accepts each of the plaintiffs' grounds as an alternative basis for its grant of summary judgment.

In South Carolina, an insurer who pays the insured the amount of his loss "become subrogated pro tanto by operation of law to whatever rights the insured may have against the wrongdoer." Calvert Fire Insurance Company v. James, 114 S.E.2d 832, 835 (S.C. 1960). As Hystron's insurer, Aetna, when it paid the amount of Hystron's loss, became Hystron's subrogee and thereby "stands in Hystron's shoes," acquiring whatever rights Hystron may have against Security Forces. Similarly, Security Insurance Company, as Security Forces' insurer, is its subrogee. Consequently, Hystron and Aetna, on the one hand, and Security Forces and Security Insurance, on the other, as subrogors and subrogees, are identical entities who, in this lawsuit, share the same rights and liabilities against the other pair.

The "Contract for Guard Service" between Security Forces and Hystron contains a paragraph 8 the following language: "The Contractor [Security Forces] further agrees to defend and hold harmless the company [Hystron] in connection with any and all claims arising as a result of operations performed by the Contractor under this contract." This contractual provision undoubtedly applies to the automobile accident in which Mr. Greer and the Biener family were involved since Security Forces stipulated to the New York trial court that "at the time of the accident," Mr. Greer was an employee of Security Forces and was "in the course of his duties as a security guard at the premises of Hystron Fibers, Inc." Based on this paragraph of the contract, this court agrees with the New York trial court that Security Forces was obligated to reimburse Hystron for the amount that Hystron paid to the Biener family as a result of the automobile accident.

If Hystron has the right under the hold harmless agreement to be reimbursed by Security Forces and/or Security Insurance, Aetna, as Hystron's subrogee, clearly has the same right. Applying New York law, the New York trial court reached the same conclusion. Yet if the estate of Charles Furman Greer can be held liable to Security Forces and/or Security Insurance Company, only Aetna would be affected by the liability since the only possible asset of the Greer estate is the Aetna insurance policy covering the Hystron vehicle involved in the accident. See S.C. Code Ann. § 21-15-640; Moultis v. Degen, 301 S.E.2d 554 (S.C. 1983). In essence, seeking to hold the estate liable is merely a means of requiring Aetna to reimburse Security Forces and/or Security Insurance Company for its loss as a result of the judicial proceedings in New York. Requiring Aetna to reimburse the defendants, however, deprives Aetna of the rights that it inherited as Hystron's subrogee. Requiring Aetna to pay Security Forces and/or its insurer essentially nullifies paragraph 8 of the contract between Hystron and Security Forces.

A further indication that the parties to the contract intended that Hystron not be held liable for the acts of the Security Forces employees appears on the cover sheet of the certificate of insurance that Security Forces delivered to Hystron. Written there in all capital letters are the words "HOLD HARMLESS AGREEMENT #1 ON REVERSE SIDE APPLIES." Note 1 on the reverse side says: "The Contractor [Security Forces] further agrees to defend and hold harmless the Company [Hystron] in connection with any and all claims arising as a result of operations performed by the Contractor under this contract." This language, appearing in the certificate of insurance that Security Forces presented to Hystron in accordance with paragraph 6 of the contract for guard services, confirms that Hystron had the right to reimbursement from Security Forces. And again, Aetna, as Hystron's subrogee, succeeded to that right.

A third basis for granting the plaintiff's motion for summary judgment also appears in the contract for guard services between Hystron and Security Forces. In section 6(c) of the contract, Security Forces agreed to "obtain, pay for, and keep in force . . . automobile liability [insurance] for all vehicles owned, hired or used, provided the vehicle is being used in the business of Security Forces, Inc." Since Security Forces stipulated in the New York court that its employee, Mr. Greer, was, at the time of the accident, engaged in the course of his duties as a security guard at the Hystron premises, Hystron is entitled to the benefit of the promise that Security Forces made to it in the contract between them.

Of course, if Hystron is entitled to this benefit, Aetna, who now stands in Hystron's shoes, is entitled to the same benefits as Hystron. Since one of these benefits is clearly that Security Forces and its insurer will provide the insurance for such vehicles as the one Mr. Greer was driving when the accident occurred, Aetna is entitled in this court to assert its right to that benefit and have this court uphold it. Quite simply, Hystron and Aetna should not suffer because Hystron took the precaution of purchasing the Aetna policy covering the vehicle that Mr. Greer was driving. While that policy would benefit Hystron in its use of the vehicle, the clear words of the Hystron-Security Forces contract demonstrate that Security Forces promised to Hystron and, by imputation, to Aetna that its insurance carrier, Security Insurance Company, would insure the vehicle when a Security Forces employee used it in his work. This court respects the parties' intentions on this point. Moreover, the contract for guard services quite clearly says that the purpose of the certificate of insurance showing Security Forces' purchase of the required automobile liability policy is to "[evidence] that such insurance is in effect. . . ."

The defendants argue that since Mr. Greer was a permissive user of the Hystron vehicle, Aetna promised him coverage in the policy of insurance. Therefore, Aetna now has an absolute duty, separate and apart from the duty owed to Hystron, to defend Mr. Greer irrespective of the Hystron-Security Forces agreements. This reasoning is inapplicable to this case. First, since the Greer estate is closed, Aetna has not abandoned any duty to the estate, since the estate, distinct from Aetna, can suffer no loss whether defended or undefended.

Second, and more importantly, no injured plaintiff is left unremedied by this court's enforcement of the valid contractual rights that Aetna inherited. The Biener family is satisfied. Only Security Forces and Security Insurance object to enforcement of the contracts. Yet these are the same parties that negotiated and agreed in those documents to hold Hystron harmless. Both defendants assured Hystron and Aetna that they would bear the liability for the acts of the employees of Security Forces. Security Forces did so in its contract for guard services, and Security Insurance did so in its certificate of insurance. They cannot now complain because these promises bind them. This court will not negate those agreements when it can honor them and place the liability precisely where the defendants contracted to have it.

The documents before this court undisputedly set forth the rights of Hystron and Security Forces and, therefore, of Aetna and Security Insurance also. The law of this state requires this court to

respect the clear relationships and intentions of the parties. E.g., Thomas-McCain, Inc. v. Siter, 232 S.E.2d 728, 729 (S.C. 1977). South Carolina law also makes Aetna the subrogee of Hystron, and this confers on Aetna Hystron's rights. Calvert Fire Insurance Company v. James, 114 S.E.2d at 835. To permit Aetna to be liable to the defendants denies Hystron the benefit of its bargained-for rights, negates the Hystron-Security Forces contract, and deprives Aetna of its legal status as Hystron's subrogee. This court cannot permit this result under the documents and legal rights present here.

If Aetna can be held liable to Security Forces and/or its insurer through Mr. Greer's estate, the effect is that Security Forces and Security Insurance will have recovered from Aetna the same money that the New York court ordered those parties to pay to Aetna. Thus, the South Carolina lawsuit related to the instant one seeks to create a circuity of action. This possibility of a circuity of action is a prominent feature of the lengthy legal proceedings that have arisen from the automobile accident of July 27, 1970, and was an issue that concerned the New York trial court just as it does this court. Certainly, judicial proceedings must have an ending, and one duty of the courts is to ensure finality in their processes. Antrum v. Hartsville Production Credit Association, 89 S.E.2d 376, 379-80 (S.C. 1955); Watson v. Goldsmith, 31 S.E.2d 317, 319 (S.C. 1944). A very important aspect of the plaintiffs' present action for declaratory judgment is that it seeks to prevent the circuity of action described above and to place a stamp of finality on the fourteen years of legal proceedings preceding this order.

Not only could the other pending lawsuit result in a circuity of action, but that circuity in this case is possibly endless. Aetna, as subrogee of Hystron, already has a valid judgment from the State of New York declaring that Security Forces and/or Security Insurance Company must reimburse it for losses that it incurred as a result of the 1970 automobile accident. If this court permits Security Forces and/or Security Insurance Company to recover from Aetna the money that those parties have already once paid to Aetna, Aetna could theoretically seek reimbursement again from Security Forces and/or Security Insurance Company for the loss that it suffered. This court, just as the New York trial court, cannot sanction such circuity. Because of the appropriateness under the Hystron-Security Forces documents of declaring that Aetna and the estate cannot be liable to the defendants in this matter and of the necessity of avoiding a circuity of action, this court feels that this action for declaratory judgment is the proper

point for establishing a much-needed finality to these proceedings. For this fourth alternative reason, then, this court grants the plaintiffs' motion for summary judgment.

Finally, this court also finds some merit in the plaintiffs' argument that the constitutional doctrine of full faith and credit precludes holding Aetna liable to the defendants in any action arising from the 1970 accident. The plaintiffs' argument is that the judgment of the New York trial court was that "the third-party defendant, Security Forces, Inc. of Hartford [sic], shall indemnify defendant Hystron Fibers, Inc. and/or its insurance carrier, Aetna Life and Casualty Company." The plaintiffs contend that the New York appeals court affirmed this judgment.

It is true that in its brief opinion, the Appellate Division first said of the judgment of the trial court that it

> adjudged third-party defendant Security Forces, Inc., liable to third-party plaintiff Hystron Fibers, Inc. for $450,000.00 plus interest, and [that it] dismissed the fourth-party impleader action brought by Security [Forces] and a fifth-party impleader action without prejudice to such actions in another appropriate jurisdiction but with certain substantive limitations upon such actions. . . .

The Appellate Division then "unanimously ordered that the judgment so appealed from be . . . modified on the law, to delete from the judgment the limitations imposed on future actions derived from the fourth- and fifth-party actions, and otherwise affirmed. . . . " Thus, the appellate court left undisturbed that part of the judgment of the trial court that affects Hystron/Aetna and Security Forces/Security Insurance.

The plaintiffs next argue that since the full faith and credit clause of the United States Constitution requires this court to give to the judicial proceedings of the State of New York the same effect in South Carolina as those proceedings would have in New York, this court must declare that Aetna cannot be held liable to the defendants. According to the plaintiffs, if the effect in New York of that state's judicial proceedings is that Aetna can have no liability to these defendants, the only way for this court to comply with the full faith and credit clause is to declare that in South Carolina Aetna also can have no liability to these defendants.

Although this court finds the plaintiffs' argument appealing, it cannot completely agree with it. Clearly, if the opinion of the

New York trial court were the final word of the New York courts, the plaintiffs' argument would be correct and the full faith and credit clause would alone compel this court to grant the declaratory relief that the plaintiffs request. Because the New York appellate court modified the judgment of the trial court, however, this court is unable to determine the exact effect that the New York appellate court intended its judgment to have. It may have modified the judgment solely because of its lack of jurisdiction over the fourth- and fifth-party defendants or it may have intended some other result. Rather than speculate on such matters, this court prefers to rely for its decision on the clear language of the agreements discussed above and that this court feels adequately dispose of the plaintiffs' motion.

Nevertheless, the Appellate Division obviously affirmed a part of the trial court's judgment. To the extent that that affirmance requires the defendants in this matter to reimburse Aetna, this court is unwilling to undermine that valid judicial proceeding of the State of New York by allowing Aetna to be placed in the position of having to pay that reimbursement back to the defendants. Indeed, to the extent that the judgment of the New York appellate court precludes Aetna from being held liable to Security Forces and Security Insurance Company, this court is constitutionally incapable of undermining that valid judicial proceeding.

If a South Carolina court orders Aetna to pay back to Security Forces and/or Security Insurance what the New York courts ordered Security Forces and/or Security Insurance to pay to Aetna, the New York proceeding has obviously not received full faith and credit in this state. The Constitution clearly prohibits Security Forces and/or Security Insurance from challenging here the judgments rendered in New York. Magnolia Petroleum Compnay v. Hunt, 320 U.S. 430, 440-41 (1943). Thus, the New York judgment is entitled to full faith and credit in this state. But this court cannot say with certainty that that doctrine alone disposes of the plaintiffs' motion since the precise effect of the New York judgment is not clear.

In conclusion, this court agrees with the New York trial court that

> Hystron clearly had a right to be indemnified and held harmless by Security [Forces] by [sic] the acts of the Security [Forces] employees. Aetna, as its insurer became subrogated to Hystron's rights and stood in its shoes. It is entitled to assert, just as Hystron would be,

> that when standing in Hystron's shoes, it too is entitled to be indemnified and held harmless. It would not be "held harmless" if it were compelled to reimburse Security [Forces] so that Security [Forces] can pay it.

New York Trial Court Opinion at 6-7. Moreover, ensuring Aetna's right to indemnity is clearly in line with the law in South Carolina, which supports and requires a court to enforce one party's right to be indemnified by another. See Stuck v. Pioneer Logging Machinery, Inc., 301 S.E.2d 552 (S.C. 1983); Addy v. Bolten, 183 S.E.2d 708 (S.C. 1971). In addition, to the extent that the appellate court in New York may have affirmed the above-quoted language of the trial court, the United States Constitution compels this court to give effect to that judgment.

For all of the alternative reasons discussed above, this court grants the declaratory relief that the plaintiff, Aetna, respects in this matter and declares that Aetna cannot be held liable to the defendants. Since without the possibility of any liability on Aetna's part, the estate of Charles Furman Greer contains nothing that either of the defendants can recover, the effect of this declaration in favor of Aetna is that the estate also cannot be held liable to the defendants. For this reason, this court also grants to the estate of Charles Furman Greer the declaratory relief that it requests.

AND IT IS SO ORDERED.

James B. Stephen, Judge
Seventh Judicial Circuit

July 20, 1984

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Aetna Casualty & Surety	)	
Company, a corporation; and	)	
Doris Geneva Greer, as	)	
Administratrix D.B.N.C.T.A.	)	
of the Estate of Charles Furman	)	
Greer, Deceased,	)	
	)	
Plaintiffs,	)	AMENDED ORDER
	)	
—vs—	)	84-CP-42-98
	)	
Security Forces, Inc.; and	)	
Security Insurance Company	)	
of Hartford,	)	
	)	
Defendants.	)	

This case is before the court on the plaintiffs' motion for summary judgment. The suit is one for declaratory judgment in which the plaintiffs request that this court declare that they cannot be held liable to the defendants in any action arising from an automobile accident that occurred on July 27, 1970. Presently pending in the Court of Common Pleas for Spartanburg County is such an action by the defendant, Security Forces, Inc., in which Security Forces seeks indemnity from the estate of Charles Furman Greer for the amounts that Security Forces, through its insurer, the defendant, Security Insurance Company of Hartford, paid as a result of the automobile accident. The court grants the plaintiffs' motion for summary judgment and hereby declares that neither plaintiff can be held liable to either defendant in any action arising from the aforesaid automobile accident.

FINDINGS OF FACT

In support of their motion for summary judgment, the plaintiffs filed with the court one affidavit and their request for admissions along with the defendants' response to the request. These materials, in particular the documents whose genuineness is admitted as a part of the request for admissions, establish the undis-

puted facts of this case.

On July 27, 1970, a single-car accident occurred at the intersection of Interstates 85 and 26 near Spartanburg, South Carolina. Six passengers and one driver were riding in the car at the time of the accident. All six passengers were members of the Hans Biener family, which was on its way to the airport to leave Spartanburg and move to New York City. All of the members of the Biener family were injured in the accident, and Mrs. Hedwig Biener died shortly after the accident. The driver of the car, Charles Furman Greer, died several months after the accident from injuries received in it.

Mr. Greer was employed in 1970 by Security Forces, Inc. as a security guard. Mr. Biener was an employee of Hystron Fibers in Spartanburg. Pursuant to a contract between Security Forces and Hystron by which Security Forces agreed to provide security guard services to Hystron, Mr. Greer was stationed at the Hystron Fibers plant. At the time of the accident, he was using a Hystron car to drive the Biener family to the airport. Driving Hystron vehicles was part of the usual duties of the Security Forces guards who worked at Hystron.

Because of the injuries received by the members of the Biener family in the accident, Mr. Biener, as representative of his deceased wife, as guardian of his minor children, and for himself, instituted on November 16, 1971, an action in the State of New York for the wrongful death and injuries received in the accident. He named as the defendant his employer, Hystron Fibers. On April 2, 1974, Hystron Fibers filed a third-party complaint against Security Forces seeking to require that company to reimburse Hystron for any damages that it was required to pay to the Biener family.

Eventually, Hystron and Security Forces reached a settlement with Mr. Biener. Under the terms of the settlement, Mr. Biener received $450,000.00. Hystron and Security Forces also agreed to submit to the New York court on stipulations the question of which of them would be liable for paying the $450,000.00 to the Biener family.

On April 6, 1978, the New York court held that Hystron and/or its insurer, Aetna Casualty and Surety Company, was liable for the $450,000.00, plus interest. The court also held, however, that Security Forces, the third-party defendant, and/or its insurer, Security Insurance Company of Hartford, must reimburse Hystron and/or Aetna for the amount paid to the Biener family. The opinion of the New York trial court is before this court as a part of the

plaintiffs' request for admissions. As that opinion indicates, the trial court based Hystron's and Aetna's rights to indemnity on three grounds: (1) The hold harmless clause in the contract for security guard services between Hystron and Security Forces; (2) the hold harmless agreement included in the certificate of insurance delivered by Security Forces to Hystron; and (3) the paragraph of the contract between Security Forces and Hystron that required Security Forces to provide automobile liability insurance for all vehicles owned, hired, or used by Security Forces in conducting its business with Hystron. This contract for guard services and the certificate of insurance are also before this court as parts of the defendants' response to the plaintiff's request for admissions.

On December 23, 1980, the Appellate Division of the Supreme Court of the State of New York affirmed the judgment of the trial court with some modifications. The result of the Appellate Division's action was nonetheless to require Hystron and/or Aetna to pay the Biener family and to require Security Forces and/or Security Insurance Company to reimburse Hystron and/or Aetna for that amount paid. The opinion of the Appellate Division is also before this court as part of the plaintiffs' request for admissions and the defendants' response thereto.

On June 22, 1981, Security Forces and/or Security Insurance Company paid the amount of the judgment with interest. The amount of the payment was $540,775.10. On October 3, 1983, Security Forces filed in the Court of Common Pleas for Spartanburg County the aforementioned lawsuit related to the instant case. In that suit, Security Forces seeks reimbursement from the estate of Charles Furman Greer of the money that Security Forces or its insurer paid in satisfaction of the judgment in New York, plus the sums expended in the defense of that action, plus interest on these amounts. The basis for Security Forces' cause of action is common-law indemnity.

Because Mr. Greer died in 1970, his estate is now closed. The administratrix of the estate, Doris Geneva Greer, has called upon the Aetna Casualty and Surety Company to defend the action brought against the estate of her deceased husband. Since the Aetna policy is the only possible asset of the closed estate, the companion case is obviously one in which Security Forces seeks reimbursement from Aetna for the amounts that the courts of the State of New York ordered that it pay to Hystron and/or Aetna.

On July 9, 1984, this court heard arguments on the plaintiffs' motion for summary judgment in the instant action for declaratory judgment. Because no disputed facts exist in this matter and

judgment is appropriate as a matter of law, this court grants the plaintiffs' motion for summary judgment and declares as a matter of law that neither Aetna nor Mr. Greer's estate can be held liable to Security Forces or Security Insurance Company in any action arising from the automobile accident of July 27, 1970.

CONCLUSIONS OF LAW

The plaintiffs presented to the court five separate bases for granting their motion for summary judgment. Although it does so to varying degrees, this court accepts each of the plaintiffs' grounds as an alternative basis for its grant of summary judgment.

In South Carolina, an insurer who pays the insured the amount of his loss "becomes subrogated pro tanto by operation of law to whatever rights the insured may have against the wrongdoer." Calvert Fire Insurance Company v. James, 114 S.E.2d 832, 835 (S.C. 1960). As Hystron's insurer, Aetna, when it paid the amount of Hystron's loss, became Hystron's subrogee and thereby "stands in Hystron's shoes," acquiring whatever rights Hystron may have against Security Forces. Similarly, Security Insurance Company, as Security Forces' insurer, is its subrogee. Consequently, Hystron and Aetna, on the one hand, and Security Forces and Security Insurance, on the other, as subrogors and subrogees, are identical entities who, in this lawsuit, share the same rights and liabilities against the other pair.

The "Contract for Guard Service" between Security Forces and Hystron contains at paragraph 8 the following language: "The Contractor [Security Forces] further agrees to defend and hold harmless the company [Hystron] in connection with any and all claims arising as a result of operations performed by the Contractor under this contract." This contractual provision undoubtedly applies to the automobile accident in which Mr. Greer and the Biener family were involved since Security Forces stipulated to the New York trial court that "at the time of the accident," Mr. Greer was an employee of Security Forces and was "in the course of his duties as a security guard at the premises of Hystron Fibers, Inc." Based on this paragraph of the contract, this court agrees with the New York trial court that Security Forces was obligated to reimburse Hystron for the amount that Hystron paid to the Biener family as a result of the automobile accident.

If Hystron has the right under the hold harmless agreement to be reimbursed by Security Forces and/or Security Insurance, Aetna, as Hystron's subrogee, clearly has the same right. Applying

New York law, the New York trial court reached the same conclusion. Yet if the estate of Charles Furman Greer can be held liable to Security Forces and/or Security Insurance Company, only Aetna would be affected by the liability since the only possible asset of the Greer estate is the Aetna insurance policy covering the Hystron vehicle involved in the accident. See S.C. Code Ann. § 21-15-640; Moultis v. Degen, 301 S.E.2d 554 (S.C. 1983). In essence, seeking to hold the estate liable is merely a means of requiring Aetna to reimburse Security Forces and/or Security Insurance Company for its loss as a result of the judicial proceedings in New York. Requiring Aetna to reimburse the defendants, however, deprives Aetna of the rights that it inherited as Hystron's subrogee. Requiring Aetna to pay Security Forces and/or its insurer essentially nullifies paragraph 8 of the contract between Hystron and Security Forces.

A further indication that the parties to the contract intended that Hystron not be held liable for the acts of the Security Forces employees appears on the cover sheet of the certificate of insurance that Security Forces delivered to Hystron. Written there in all capital letters are the words "HOLD HARMLESS AGREEMENT #1 ON REVERSE SIDE APPLIES." Note 1 on the reverse side says: "The Contractor [Security Forces] further agrees to defend and hold harmless the Company [Hystron] in connection with any and all claims arising as a result of operations performed by the Contractor under this contract." This language, appearing in the certificate of insurance that Security Forces presneted to Hystron in accordance with paragraph 6 of the contract for guard services, confirms that Hystron had the right to reimbursement from Security Forces. And again, Aetna, as Hystron's subrogee, succeeded to that right.

A third basis for granting the plaintiff's motion for summary judgment also appears in the contract for guard services between Hystron and Security Forces. In section 6(c) of the contract, Security Forces agreed to "obtain, pay for, and keep in force . . . automobile liability [insurance] for all vehicles owned, hired or used, provided the vehicle is being used in the business of Security Forces, Inc." Since Security Forces stipulated in the New York court that its employee, Mr. Greer, was, at the time of the accident, engaged in the course of his duties as a security guard at the Hystron premises, Hystron is entitled to the benefit of the promise that Security Forces made to it in the contract between them.

Of course, if Hystron is entitled to this benefit, Aetna, who now stands in Hystron's shoes, is entitled to the same benefits as

Hystron. Since one of these benefits is clearly that Security Forces and its insurer will provide the insurance for such vehicles as the one Mr. Greer was driving when the accident occurred, Aetna is entitled in this court to assert its right to that benefit and have this court uphold it. Quite simply, Hystron and Aetna should not suffer because Hystron took the precaution of purchasing the Aetna policy covering the vehicle that Mr. Greer was driving. While that policy would benefit Hystron in its use of the vehicle, the clear words of the Hystron-Security Forces contract demonstrate that Security Forces promised to Hystron and, by imputation, to Aetna that its insurance carrier, Security Insurance Company, would insure the vehicle when a Security Forces employee used it in his work. This court respects the parties' intentions on this point. Moreover, the contract for guard services quite clearly says that the purpose of the certificate of insurance showing Security Forces' purchase of the required automobile liability policy is to "[evidence] that such insurance is in effect. . . ."

The defendants argue that since Mr. Greer was a permissive user of the Hystron vehicle, Aetna promised him coverage in the policy of insurance. Therefore, Aetna now has an absolute duty, separate and apart from the duty owed to Hystron, to defend Mr. Greer irrespective of the Hystron-Security Forces agreements.

The court has considered this argument. It has also considered the specific language of the Aetna policy that defines Mr. Greer as an "insured" as well as the insuring agreement contained in that policy. The court finds, however, that the defendants' reasoning on the basis of the policy is inapplicable to the present dispute because it ignores the unique factual situation that this case presents and fails to acknowledge the agreements with Hystron. Thus, their reasoning seizes serendipitously on the routine form language of the insurance contract between Hystron and Aetna and elevates it over the more carefully negotiated and specifically applicable contrary language that Hystron and Security Forces agreed would govern the precise situation that the unique facts of this case present.

Initially, this court notes that by enforcing the Hystron-Security Forces/Security Insurance agreements and declaring that Aetna cannot be liable to the defendants, this court does not unjustly leave the Greer estate to fend for itself against Security Forces and Security Insurance. Whether defended or undefended by Aetna, the estate, distinct from Aetna, can sustain no loss to these defendants, for it is closed. Actually, under the unusual facts of this case, denying Security Forces and Security Insurance the

opportunity to reach the Aetna policy leaves no injured and innocent party unremedied, for no such party exists in this case. The Biener family has been satisfied and the estate has nothing to lose.

Objection to the enforcement of the contracts with Hystron nevertheless comes from Security Forces and Security Insurance. But their position is clearly not one of innocence and accidental victimization. They would have this court ignore the agreements they made with Hystron and blindly adhere to the routine language of the Aetna policy. Yet Security Forces and Security Insurance are the very parties that negotiated and agreed in those Hystron documents to hold Hystron harmless. They should not be allowed to disavow their own clear, contractual intentions so that they can fall under the more advantageous terms of an insurance contract to which they are not parties and the very existence of which, as far as it concerns them, is certainly fortuitous. Their interest in voiding their agreements with Hystron is apparent; their sole purpose in suing the Greer estate is to have the courts of this state nullify those agreements so that they can reach indirectly what the New York courts would not allow them to reach directly, the Aetna policy. Regardless of how this court in a case with different facts might resolve the conflict between the language of the Aetna policy and that of the agreements with Hystron, resolution of the instant dispute lies simply in having Security Forces and Security Insurance perform as they agreed to perform. Since Hystron, Security Forces, and Security Insurance so clearly specified in contracts of their own making which of them would bear the liability that arises in this case, this court, on the facts of this case, cannot accept the defendants' argument that it should ignore those contracts and decide this dispute only on the basis of the Hystron-Aetna policy.

Significantly, the dispute underlying the instant one arose initially not when the Bieners sued the Greer estate, but when Hystron suffered a loss on account of the actions of an employee of Security Forces. Although Aetna stood ready to cover that loss for Hystron, both Security Forces and Security Insurance had already assured Hystron and Aetna that they would bear the liability for any acts of the employees of Security Forces. Security Forces made this assurance in its contract for guard services, and Security Insurance did so in its certificate of insurance. Those parties cannot now complain that their own promises bind them. This court will not negate those promises when by honoring them, it can, without offense to others, place the liability precisely where Security Forces and Security Insurance contracted to have it placed.

The documents before this court undisputedly set forth the rights of Hystron and Security Forces and, therefore, of Aetna and Security Insurance also. The law of this state requires this court to respect the clear relationships and intentions of the parties. E.g., Thomas-McCain, Inc. v. Siter, 232 S.E.2d 728, 729 (S.C. 1977). South Carolina law also makes Aetna the subrogee of Hystron, and this confers on Aetna Hystron's rights. Calvert Fire Insurance Company v. James, 114 S.E.2d at 835. To permit Aetna to be liable to the defendants denies Hystron the benefit of its bargained-for rights, negates the Hystron-Security Forces contract, and deprives Aetna of its legal status as Hystron's subrogee. This court cannot permit this result under the documents and legal rights present here.

If Aetna can be held liable to Security Forces and/or its insurer through Mr. Greer's estate, the effect is that Security Forces and Security Insurance will have recovered from Aetna the same money that the New York court ordered those parties to pay to Aetna. Thus, the South Carolina lawsuit related to the instant one seeks to create a circuity of action. This possibility of a circuity of action is a prominent feature of the lengthy legal proceedings that have arisen from the automobile accident of July 27, 1970, and was an issue that concerned the New York trial court just as it does this court. Certainly, judicial proceedings must have an ending, and one duty of the courts is to ensure finality in their processes. Antrum v. Hartsville Production Credit Association, 89 S.E.2d 376, 379-80 (S.C. 1955); Watson v. Goldsmith, 31 S.E.2d 317, 319 (S.C. 1944). A very important aspect of the plaintiffs' present action for declaratory judgment is that it seeks to prevent the circuity of action described above and to place a stamp of finality on the fourteen years of legal proceedings preceding this order.

Not only could the other pending lawsuit result in a circuity of action, but that circuity in this case is possibly endless. Aetna, as subrogee of Hystron, already has a valid judgment from the State of New York declaring that Security Forces and/or Security Insurance Company must reimburse it for losses that it incurred as a result of the 1970 automobile accident. If this court permits Security Forces and/or Security Insurance Company to recover from Aetna the money that those parties have already once paid to Aetna, Aetna could theoretically seek reimbursement again from Security Forces and/or Security Insurance Company for the loss that it suffered. This court, just as the New York trial court, cannot sanction such circuity. Because of the appropriateness

under the Hystron-Security Forces documents of declaring that Aetna and the estate cannot be liable to the defendants in this matter and of the necessity of avoiding a circuity of action, this court feels that this action for declaratory judgment is the proper point for establishing a much-needed finality to these proceedings. For this fourth alternative reason, then, this court grants the plaintiffs' motion for summary judgment.

Finally, this court also finds some merit in the plaintiffs' argument that the constitutional doctrine of full faith and credit precludes holding Aetna liable to the defendants in any action arising from the 1970 accident. The plaintiffs' argument is that the judgment of the New York trial court was that "the third-party defendant, Security Forces, Inc. of Hartford [sic], shall indemnify defendant Hystron Fibers, Inc. and/or its insurance carrier, Aetna Life and Casualty Company." The plaintiffs contend that the New York appeals court affirmed this judgment.

It is true that in its brief opinion, the Appellate Division first said of the judgment of the trial court that it

> adjudged third-party defendant Security Forces, Inc., liable to third-party plaintiff Hystron Fibers, Inc. for $450,000.00 plus interest, and [that it] dismissed the fourth-party impleader action brought by Security [Forces] and a fifth-party impleader action without prejudice to such actions in another appropriate jurisdiction but with certain substantive limitations upon such actions. . . .

The Appellate Division then "unanimously ordered that the judgment so appealed from be . . . modified on the law, to delete from the judgment the limitations imposed on future actions derived from the fourth- and fifth-party actions, and otherwise affirmed. . . . " Thus, the appellate court left undisturbed this part of the judgment of the trial court that affects Hystron/Aetna and Security Forces/Security Insurance.

The plaintiffs next argue that since the full faith and credit clause of the United States Constitution requires this court to give to the judicial proceedings of the State of New York the same effect in South Carolina as those proceedings would have in New York, this court must declare that Aetna cannot be held liable to the defendants. According to the plaintiffs, if the effect in New York of that state's judicial proceedings is that Aetna can have no liability to these defendants, the only way for this court to comply with the full faith and credit clause is to declare that in South Carolina Aetna also can have no liability to these defendants.

Although this court finds the plaintiffs' argument appealing, it cannot completely agree with it. Clearly, if the opinion of the New York trial court were the final word of the New York courts, the plaintiffs' argument would be correct and the full faith and credit clause would alone compel this court to grant the declaratory relief that the plaintiffs request. Because the New York appellate court modified the judgment of the trial court, however, this court is unable to determine the exact effect that the New York appellate court intended its judgment to have. It may have modified the judgment solely because of its lack of jurisdiction over the fourth- and fifth-party defendants or it may have intended some other result. Rather than speculate on such matters, this court prefers to rely for its decision on the clear language of the agreements discussed above and that this court feels adequately disposed of the plaintiffs' motion.

Nevertheless, the Appellate Division obviously affirmed a part of the trial court's judgment. To the extent that that affirmance requires the defendants in this matter to reimburse Aetna, this court is unwilling to undermine that valid judicial proceeding of the State of New York by allowing Aetna to be placed in the position of having to pay that reimbursement back to the defendants. Indeed, to the extent that the judgment of the New York appellate court precludes Aetna from being held liable to Security Forces and Security Insurance Company, this court is constitutionally incapable of undermining that valid judicial proceeding.

If a South Carolina court orders Aetna to pay back to Security Forces and/or Security Insurance what the New York courts ordered Security Forces and/or Security Insurance to pay to Aetna, the New York proceeding has obviously not received full faith and credit in this state. The Constitution clearly prohibits Security Forces and/or Security Insurance from challenging here the judgments rendered in New York. Magnolia Petroleum Company v. Hunt, 320 U.S. 430, 440-41 (1943). Thus, the New York judgment is entitled to full faith and credit in this state. But this court cannot say with certainty that that doctrine alone disposes of the plaintiffs' motion since the precise effect of the New York judgment is not clear.

In conclusion, this court agrees with the New York trial court that

> Hystron clearly had a right to be indemnified and held harmless by Security [Forces] by [sic] the acts of the

> Security [Forces] employees. Aetna, as its insurer became subrogated to Hystron's rights and stood in its shoes. It is entitled to assert, just as Hystron would be, that when standing in Hystron's shoes, it too is entitled to be indemnified and held harmless. It would not be "held harmless" if it were compelled to reimburse Security [Forces] so that Security [Forces] can pay it.

New York Trial Court Opinion at 6-7. Moreover, ensuring Aetna's right to indemnity is clearly in line with the law in South Carolina, which supports and requires a court to enforce one party's right to be indemnified by another. See Stuck v. Pioneer Logging Machinery, Inc., 301 S.E.2d 552 (S.C. 1983); Addy v. Bolten, 183 S.E.2d 708 (S.C. 1971). In addition, to the extent that the appellate court in New York may have affirmed the above-quoted language of the trial court, the United States Constitution compels this court to give effect to that judgment.

For all of the alternative reasons discussed above, this court grants the declaratory relief that the plaintiff, Aetna, requests in this matter and declares that Aetna cannot be held liable to the defendants. Since without the possibility of any liability on Aetna's part, the estate of Charles Furman Greer contains nothing that either of the defendants can recover, the effect of this declaration in favor of Aetna is that the estate also cannot be held liable to the defendants. For this reason, this court also grants to the estate of Charles Furman Greer the declaratory relief that it requests.

AND IT IS SO ORDERED.

James B. Stephen, Judge
Seventh Judicial Circuit

August 22, 1984

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Aetna Casualty & Surety Company, a corporation; and Doris Geneva Greer, as Administratrix D.B.N.C.T.A. of the Estate of Charles Furman Greer, Deceased, ... Respondents,

v.

Security Forces, Inc., and Security Insurance Company of Hartford,. ..... .Appellants.

Appeal From Spartanburg County
James B. Stephen, Judge

Opinion No. 0767
Heard April 14, 1986 – Filed August 4, 1986

REVERSED

John E. Johnston, Bradford N. Martin and Gwendolyn G. Embler, all of Leatherwood, Todd & Mann, of Greenville, for appellants.

N. Heyward Clarkson, III, of Rainey, Britton, Gibbes & Clarkson; and C. Wade Cleveland, both of Greenville, for respondents.

SANDERS, C.J.: Appellants Security Forces, Inc. and Security Insurance Company of Hartford appeal from an order of the Circuit Court ruling that respondents Aetna Casualty & Surety Company and Doris Geneva Greer, as administratrix D.B.N.C.T.A. of the estate of Charles Furman Greer, could not be liable in connection with an action previously filed by Security Forces against the estate. We reverse.

Our primary task in this appeal is to establish which of the following has precedence: (1) the duty of Aetna, as an automobile

liability insurer, to one who holds the status of an insured by virtue of the policy's omnibus coverage or (2) the rights accruing to Aetna by virtue of its status as subrogee of the policy's named insured. Here, Aetna's duty as an insurer on the one hand and its subrogated rights on the other are at hopeless loggerheads. We hold that in this case Aetna's duty as an insurer is paramount.

The facts, though somewhat involved, can be fairly summarized as follows.

In July 1970, Security Forces and Hystron Corporation had in effect a contract under which Security Forces provided Hystron with guard services to protect Hystron's property in Spartanburg County. Security Forces agreed to defend and hold Hystron harmless in connection with any claims arising as a result of operations performed by Security Forces. Security Forces also agreed to obtain general liability and automobile liability insurance in specified amounts of coverage. In fulfillment of this agreement Security Forces acquired a combined general and automobile liability insurance policy from Security Insurance. Security Forces provided Hystron with Security Insurance's certificate of insurance, which repeated verbatim the hold harmless provision contained in the contract for guard services.

Among the guards Security Forces assigned to protect Hystron's property was Charles Furman Greer. On July 27, 1970 while Greer was on duty at the Hystron location, Hystron directed him to transport one Hans Biener, a Hystron employee, and his family to the airport, using an automobile owned by Hystron. While in route to the airport the automobile struck a bridge abutment. Biener's wife was killed and the other members of the Biener family were injured. Greer later died from the injuries he received in the accident.

At the time of the accident Hystron had in force an automobile liability insurance policy issued by Aetna. Under the policy Hystron was the named insured and the automobile Greer drove was an insured vehicle. Under the policy's omnibus coverage Greer had the status of an insured because he was a permissive user.

The Bieners brought suit in the State of New York against Hystron for injury and death. Hystron joined Security Forces as a third party defendant in that suit, seeking contractual indemnity from Security Forces based upon their agreement for guard services. Security Forces then attempted to join Greer's estate as a fourth party defendant seeking implied indemnity from the estate for its liability, if any, to Hystron. The estate, in turn, sought to join Aetna as a fifth party defendant seeking indemnity

from Aetna for its liability, if any, to Security Forces. The trial court ruled it did not have personal jurisdiction over the estate. Nevertheless, the trial court's order set forth limits upon the right of Security Forces to seek indemnity from the estate, and the estate to seek indemnity from Aetna.

The parties to the action stipulated damages to be $450,000. The New York trial court ruled that Hystron was directly liable to the Bieners and that Security Forces was obligated to indemnify Hystron for Hystron's liability to the Bieners under the hold harmless provision of the contract for guard services. On appeal, the Appellate Division of the New York Supreme Court, in a 1980 decision, affirmed these aspects of the trial court's order. Without explanation, however, the Appellate Division modified the order to delete the limitations imposed on any future actions related to the fourth and fifth party actions against the estate and Aetna respectively.

Aetna, as insurer of Hystron, then paid the Bieners, and Security Insurance, as insurer of Security Forces, indemnified Aetna the amount it had paid the Bieners.

In October 1983, Security Forces filed an action in the Court of Common Pleas for Spartanburg County against the estate of its former employee, Greer, seeking implied indemnity based on the right of a master to maintain a suit against a servant where alleged misconduct of the servant has given rise to vicarious liability of the master. The proceeds of the Aetna policy are the only undistributed asset of Greer's estate.

Aetna and the administratrix of Greer's estate then brought this declaratory judgment action against Security Forces and Security Insurance seeking an order that neither Aetna nor the estate could be liable to Security Forces in connection with its pending suit against the estate.

In granting Aetna and the estate the relief they sought, the Circuit Court focused upon Aetna's right to be subrogated to the rights of Hystron, its insured. The Court noted that Aetna, in its status as Hystron's subrogee, is entitled to the benefit of both the hold harmless provision in the contract for guard services between Hystron and Security Forces and the insurance protection that Security Forces obtained from Security Insurance as part of Security Forces' performance of the contract. The Court reasoned that to require Aetna to defend Security Forces' suit against Greer's estate and pay any resulting money judgment would destroy

Aetna's protection, as Hystron's subrogee, under the hold harmless provision.[1]

Although the Circuit Court correctly analyzed the effect of such a decision against Aetna, we conclude it erred in giving effect to Aetna's rights as Hystron's subrogee over Aetna's contractual duty as the insurer of Greer.

Aetna's right, as Hystron's subrogee, to the protection of the hold harmless provision arises from the policy it issued to Hystron. Aetna's contractual duties as Greer's insurer arise out of the same policy. Aetna's right and its duties are separate and distinct. In the absence of either one, the other would undoubtedly dictate the result in this case. Resolution of this dispute requires only a choice as between the two. On the facts of this case we are unwilling to subordinate Aetna's duty to its insured to its right of subrogation accruing from another insured. This choice is consistent with the long-standing line of precedent in this jurisdiction that intensifies the duty of an insurer to its insured based upon the special nature of a contract of insurance. See Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933); Miles v. State Farm Mutual Automobile Insurance Co., 238 S.C. 374, 120 S.E.2d 217 (1961); Nichols v. State Farm Mutual Automobile Insurance Co., 279 S.C. 336, 306 S.E.2d 616 (1983). See also Brown v. South Carolina Insurance Co., 284 S.C. 47, 324 S.E.2d 641 (Ct. App. 1984).

Here, Aetna agreed with Hystron to insure permissive users, like Greer, of Hystron's vehicle. Then, as now, this coverage was required by statute. See Sections 46-750.31 to -750.32 of the Code of Laws of South Carolina, 1962, now codified in Sections 56-9-820 to -830 of the Code of Laws of South Carolina, 1976. Aetna may not now nullify this obligation by interposing a separate agreement (the hold harmless provision) through its rights as Hystron's subrogee. Cf. Pennsylvania National Mutual Casualty Insurnace Co. v. Parker, 282 S.C. 546, 551, 320 S.E.2d 458, 461 (Ct. App. 1984) ("Where a statute requires insurance for the benefit of the public . . . the insurer is not permitted to nullify its pur-

[1]The Circuit Court ruled that Greer's estate could not be liable because the Aetna policy is its only undistributed asset. See Moultis v. Degen, 279 S.C. 1, 301 S.E.2d 554 (1983) (a tort action is a claim against an estate and is barred unless an account has been filed within five months after notice, but where a closed estate has a liability insurance policy, the estate may be reopened so that a tort action may be pursued and judgment, if obtained, paid by the policy).

poses through engrafting exceptions from liability as to uses which it was the evident purpose of the statute to cover."). Under the circumstances of this case, requiring Aetna to fulfill its obligations to its insured does indeed have the effect of vitiating its rights as Hystron's subrogee with respect to the hold harmless provision. It does not, however, defeat the purpose of the hold harmless provision, which is to protect Hystron from liability arising from Security Forces' operations. Hystron has received the full benefit of the hold harmless provision from Security Forces. Hystron's policy with Aetna merely afforded it additional protection that would apply in circumstances not covered by the hold harmless provision. Merely because Hystron may have duplicated its protection in this instance with the Aetna policy is no reason to nullify Aetna's duty to its insured, Greer.

Our decision rests also on the established principle of insurance law that "[n]o right of subrogation can arise in favor of the insurer against its own insured, since by definition subrogation arises only with respect to rights of the insured against third persons to whom the insurer owes no duty." 16 Couch on Insurance 2d § 61:136 (Rev. ed. 1983). See also E.C. Long, Inc. v. Brennan's of Atlanta, Inc., 148 Ga. App. 796, 252 S.E.2d 642 (1979). Similarly, "[n]o right of subrogation arises against a person who holds the status of an additional insured . . . by the terms of the policy. . . . " 16 Couch on Insurance 2d § 61:137 (Rev. ed. 1983). See also Sherwood Trucking, Inc. v. Carolina Casualty Insurance Co., 552 F.2d 568 (4th Cir. 1977).

As noted previously, Greer had the status of an insured under the Aetna policy, specifically subparagraph (c):[2]

---

[2]The parties seem to accept as a premise to their arguments that Greer held the status of an insured under the Aetna policy. In any event, facts contained in the Statement of the Case establish Greer as an insured under subparagraph (c). Where, as here, the parties to an appeal have not appealed an order settling the record on appeal and specifying facts to be contained in the Statement, the parties are bound by those facts. See Patel v. Southern Brokers, Ltd., 277 S.C. 490, 289 S.E.2d 642 (1982); Rhodes v. Spartanburg County, 262 S.C. 644, 207 S.E.2d 85 (1974); Rule 4, Section 3A, Rules of Practice in the Supreme Court of South Carolina.

> Each of the following is an insured under this insurance to the extent set forth below:
>
> * * * *
>
> (c) any other person while using an owned automobile or a hired automobile with the permission of the named insured [Hystron], provided his actual operation . . . is within the scope of such permission. . . .

The next subparagraph of the policy identifies other parties who may also enjoy the status of an insured:

> (d) any other person or organization but only with respect to his or its liability because of acts or omissions of any insured under (a), (b) or (c) above.

Under subparagraph (d) Security Forces is also an insured to the extent that it is vicariously liable for Greer's acts or omissions as an insured under subparagraph (c). Because Aetna has no right of subrogation against its insureds, in its status as Hystron's subrogee it may not interpose the hold harmless provision against Security Forces as justification to avoid its contractual responsibility to Greer.

Aetna contends further that to allow Security Forces to collect from it through the estate would create a circular chain of recovery. Specifically, Aetna contends that if it paid Security Forces to satisfy any judgment against Greer's estate, then Aetna, as Hystron's subrogee, would seek to collect from Security Forces under the hold harmless provision. The cycle would then begin anew, ad infinitum. Our decision, however, that Aetna cannot be subrogated against its own insured, Security Forces, breaks this chain and disposes of this argument.

Aetna argues finally that to require it to fulfill its responsibilities to Greer's estate would effectively deny the judgment of the New York courts full faith and credit in the courts of this state. Aetna reasons that because the New York judgment requires Security Forces to indemnify Hystron, to require Aetna, which stands in the shoes of Hystron as Hystron's subrogee, to pay Security Forces in the suit now pending would be to deny the New York judgment its ultimate effect. We conclude this argument has no merit.

The full faith and credit clause of the federal constitution requires courts of one state to give such effect to a judgment of a

sister state as it would have in the sister state. See Hamilton v. Patterson, 236 S.C. 487, 115 S.E.2d 68 (1960); Durfee v. Duke, 375 U.S. 106, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963). We must therefore decide whether the New York courts would accord their judgment preclusive effect over either this declaratory judgment action or Security Forces' pending suit against Greer's estate. Cf. Harrison v. Springdale Water & Sewer Commission, 780 F.2d 1422 (8th Cir. 1986) (under federal full faith and credit statute federal courts extend both res judicata and collateral estoppel effect to state court judgments). A comparison of the New York and South Carolina authorities shows that their respective doctrines of res judicata and collateral estoppel are substantially the same.

The New York judgment has neither res judicata nor collateral estoppel effect over the proceedings in this state because the Appellate Division expressly deleted from the trial court's order its attempted resolution of both the claim and issues involved in the litigation here. There can be no res judicata effect for at least the reason that the New York judgment does not finally determine the merits of the claim now being resolved in this litigation. See H.G. Hall Construction Co. v. J.E.P. Enterprises, 283 S.C. 196, 321 S.E.2d 267 (Ct. App. 1984); Matter of American Insurance Co., 43 N.Y.2d 184, 401 N.Y.S.2d 36, 371 N.E.2d 798 (1977). Similarly, there is no collateral estoppel effect because the issues involved here were not decided by the New York courts. Instead, the issues involved here were not decided by the New York courts. Instead, the Appellate Division's deletion of aspects of the trial court's order left the issues unadjudicated. See Liberty Mutual Insurance Co. v. Employers Insurance of Wausau, 284 S.C. 234, 325 S.E.2d 566 (Ct. App. 1985); Kaufman v. Eli Lily and Co., 65 N.Y.2d 449, 492 N.Y.S.2d 584, 482 N.E.2d 63 (1985).

For these reasons, the order of the Circuit Court is

REVERSED.

SHAW and BELL, JJ., concur.

The South Carolina Court of Appeals

August 20, 1986

N. Heyward Clarkson, III, Esquire
Messrs. Rainey, Britton, Gibbes & Clarkson
P.O. Box 10589
Greenville, S.C. 29603

Re: Aetna Casualty & Surety Co., et al. v. Security Forces Inc., et al.

Dear Mr. Clarkson:

The Court has, today, returned your Petition for Rehearing in the above referenced case with the following Order endorsed thereon:

"Petition denied.

s/ Alexander M. Sanders, Jr., J.
s/ Curtis G. Shaw, J.
s/ Randall T. Bell, J.

August 20, 1986
Columbia, S.C."

The remittitur is, today, being forwarded to the Clerk of Court of Spartanburg County.

Very truly yours,

Reba D. Mims
Clerk

RDM/irc

cc: John E. Johnston, Esquire
Gwendolyn G. Embler, Esquire
C. Wade Cleveland, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	COMMON PLEAS
COUNTY OF SPARTANBURG	)	

Aetna Casualty & Surety Company, a corporation,

Plaintiff(s)

against

SUMMONS AND NOTICE

Doris Geneva Greer, as Administratrix D.B.N.C.T.A. of the Estate of Charles Furman Greer, Deceased; Security Forces, Inc.; and Security Insurance Company of Hartford,

Defendant(s)

TO THE DEFENDANT(S) ABOVE NAMED:

You are hereby summoned and required to answer the Complaint in this action a copy of which is herewith served upon you, (which was filed in the Office of the Clerk of this Court on the day of 19 .) and to serve a copy of your answer to the Complaint upon the subscriber at 800 First Federal Building, Greenville, South Carolina within thirty days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, the plaintiff(s) will apply to the Court for the relief demanded in the Complaint.

TO
INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

You are further summonded and notified to apply for the appointment of a guardian ad litem to represent you in this action within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the plaintiff(s) herein.

TO
INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE (THEY) RESIDE(S):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent said infant(s) under fourteen years of age (said incompetent or insane person) within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the plaintiff(s) herein.

RAINEY, BRITTON, GIBBES & CLARKSON, P.A.

BY: _____

Plaintiff's(s') Attorney(s)

N. Heyward Clarkson, III
C. Wade Cleveland

Greenville, South Carolina,
January 12, 1984

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Aetna Casualty & Surety Company, a corporation,	)	
	)	
Plaintiff,	)	
	)	
—vs—	)	COMPLAINT (NONJURY)
	)	
Doris Geneva Greer, as Administratrix D.B.N.C.T.A. of the Estate of Charles Furman Greer, Deceased; Security Forces, Inc.; and Security Insurance Company of Hartford,	)	84-CP-42-98
	)	
Defendants.	)	

The plaintiff, complaining of the defendants, will show to the court:

FOR A FIRST CAUSE OF ACTION

I

The plaintiff is a corporation organized and existing under the laws of the State of Connecticut and is engaged in writing insurance in the State of South Carolina. The defendant, Doris Geneva Greer, is a citizen and resident of Spartanburg County, South Carolina and is the duly appointed administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, as will more fully appear by reference to the probate records of Spartanburg County, South Carolina. The defendant, Security Forces, Inc., is a corporation organized and existing under the laws of the State of North Carolina and does business in Spartanburg County, South Carolina. The defendant, Security Insurance Company of Hartford is a corporation organized and existing under the laws of the State of Connecticut and is engaged in writing insurance in the State of South Carolina.

II

The plaintiff brings this action pursuant to the provisions of S.C. Code Ann. § § 15-53-10 through -140, which allow this court to inquire into and determine the rights and obligations of the parties under the facts hereinafter set forth.

III

At all times pertinent hereto Aetna Casualty & Surety Company had in force a comprehensive automobile liability insurance policy insuring Hystron Fibers, Inc.

IV

On July 27, 1970, Charles Furman Greer, deceased, was an employee of Security Forces, Inc. Security Forces, Inc., was under contract to provide security services for Hystron Fibers, Inc. While acting within the scope and course of his employment as a security guard for Security Forces, Inc., Charles Furman Greer was driving a vehicle owned by Hystron Fibers, Inc. On July 27, 1970, while Charles Furman Greer was driving this vehicle, it was involved in an accident on Interstate Highway 85 near Spartanburg, South Carolina. In this accident the passengers in Greer's vehicle, Suzanne Biener, Ulrike Biener, Karin Biener, Martin Biener, and Hans Biener suffered personal injuries and another passenger, Hedwig Biener, was killed.

V

On November 16, 1971, Hans Biener, as representative of Hedwig Biener, as father and guardian of the minor passengers, and for himself, instituted against Hystron Fibers, Inc., an action in the Supreme Court of the State of New York for the wrongful death of Hedwig Biener and for his injuries and those of his children. On April 2, 1974 Hystron Fibers, Inc., filed in the same court a third-party complaint against Security Forces, Inc., seeking to require Security Forces, Inc., to pay for any damages for the injuries and death of the passengers of the vechicle.

VI

On April 6, 1978, the court rendered a judgment in the sum of Four Hundred Fifty Thousand and 00/100 ($450,000.00) Dol-

lars to be paid to the plaintiffs by the defendant, Hystron Fibers, Inc., and/or its insurance carrier, Aetna Casualty & Surety Company. The court also adjudged that the third-party defendant, Security Forces, Inc., should indemnify the defendant, Hystron Fibers, Inc., and/or its insurance carrier, Aetna Casualty & Surety Company, for the amount of the judgment. A copy of this judgment of the Supreme Court of the State of New York is attached to this complaint and made a part hereof by reference.

VII

On December 23, 1980, the Appellate Division of the Supreme Court of the State of New York affirmed, with some modification, the judgment of the Supreme Court of the State of New York issued on April 6, 1978. A copy of this judgment of the Appellate Division is attached to this complaint and made a part hereof by reference.

VIII

On information and belief, on June 22, 1981, Security Forces, Inc., and/or the insurer, Security Insurance Company of Hartford, paid the amount of the judgment together with interest thereon to the date of payment in the total sum of Five Hundred Forty Thousand Seven Hundred Fifty-five and 10/100 ($540,755.10) Dollars.

IX

On October 3, 1983, Security Forces, Inc., instituted in the Spartanburg County Court of Common Pleas an action, which is presently pending, against Doris Geneva Greer, as administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, demanding under the theory of common-law indemnity that it be reimbursed by the Estate of Charles Furman Greer for the sums expended on account of the alleged negligence of Charles Furman Greer and also demanding repayment for the costs of defending the third-party complaint brought against Security Forces, Inc., by Hystron Fibers, Inc. In this action by Security Forces, Inc., it also requested prejudgment interest and costs.

X

Doris Geneva Greer, as administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, has called upon Aetna Casualty & Surety Company under the automobile insurance policy issued to Hystron Fibers, Inc., to defend the action brought against her by Security Forces, Inc., and to pay on her behalf as administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, any judgments that might be rendered against her in that action.

XI

Under the comprehensive automobile liability insurance policy by which Aetna Casualty & Surety Company insured Hystron Fibers, Inc., Aetna Casualty & Surety Company is subrogated to all rights of recovery that Hystron Fibers, Inc., has against any person or organization.

XII

In the contract by which Security Forces, Inc., agreed to provide security services for Hystron Fibers, Inc., Security Forces agreed to "defend and hold harmless" Hystron Fibers, Inc., "in connection with any and all claims arising as a result of operations performed by" Security Forces, Inc., under the contract.

XIII

Under the terms of this contract, Aetna Casualty & Surety Company, as subrogee to all rights of Hystron Fibers, Inc., is entitled to recover from Security Forces, Inc., all sums paid by Aetna Casualty & Surety Company in connection with the accident of July 27, 1970.

XIV

To require Aetna Casualty & Surety Company to defend the suit that Security Forces, Inc., brought against Doris Geneva Greer, as administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, and to hold Aetna Casualty & Surety Company liable for any judgment arising from that suit, results in an endless circuity of action and deprives Hystron Fibers, Inc., of the benefit of the contract that it negotiated with Security Forces, Inc.

XV

To avoid this circuity of action and end the litigation over the aforementioned automobile accident, this court should enforce the terms of the contract between Hystron Fibers, Inc., and Security Forces, Inc., and declare that the contract precludes any further duty or liability by Aetna Casualty & Surety Company toward any of the defendants in this lawsuit on the issues arising from Charles Furman Greer's accident of July 27, 1970.

XVI

A justiciable controversy exists between the parties to this action arising out of the complaint filed by Security Forces, Inc., and out of the insurance policy referred to above.

FOR A SECOND CAUSE OF ACTION

I

Aetna Casualty & Surety Company incorporates in this second clause of action all allegations of the first cause of action not inconsistent herewith.

II

Pursuant to the contract in which Security Forces, Inc., agreed to provide security services for Hystron Fibers, Inc., Security Forces, Inc., also agreed to provide automobile liability insurance "for all vehicles owned, hired or used" in the business of Security Forces, Inc. On information and belief, Security Forces, Inc., procured this insurance.

III

As subrogee to the rights of Hystron Fibers, Inc., Aetna Casualty & Surety Company is entitled to the benefits of this agreement by Security Forces, Inc., to provide this automobile insurance.

IV

To ensure Aetna's rights under its subrogor's contract, this court should declare that the contract precludes any further duty

or liability by Aetna Casualty & Surety Company toward any
the defendants in this lawsuit on the issues arising from Charl
Furman Greer's accident of July 27, 1970.

FOR A THIRD CAUSE OF ACTION

I

Aetna Casualty & Surety Company incorporates in this thi
cause of action all allegations of the first two causes of action n
inconsistent herewith.

II

In rendering their aforementioned judgments, the courts
the State of New York had jurisdiction over the same parties,
their privies, as are before this court in this suit, they had jurisdi
tion over the same subject matter as is before this court in th
suit, and they adjudicated on the merits the same questions raise
in this suit. Therefore, under article IV, section 1 of the Constit
tion of the United States, this court must accord those judici
proceedings full faith and credit and give them in this State th
same effect to which they are entitled in the State of New York.

III

On information and belief, the effect of these judicial pr
ceedings of the courts of the State of New York is to preclude an
duty or liability by Aetna Casualty & Surety Company towa
any of the defendants in this lawsuit on any issues arising fro
the automobile accident of Charles Furman Greer on July 2
1970.

IV

Under any or all of the doctrines of res judicata, collater
estoppel, estoppel by judgment, and law of the case, the aforeme
tioned judgments of the courts of the State of New York preclu
holding the Aetna Casualty & Surety Company liable to Dor
Geneva Greer, as administratrix d.b.n.c.t.a. of the Estate of Charl
Furman Greer, deceased, in the situation outlined in the complai
of Security Forces, Inc., against Doris Geneva Greer. To allo
Security Forces, Inc., to recover in that action from Aetna Cas
alty & Surety Company (on behalf of Doris Geneva Greer,

administratrix of the Estate of Charles Furman Greer, deceased) is to negate the valid judicial proceedings of the State of New York.

V

On information and belief, the judicial proceedings of the courts of the State of New York bar the pending suit by Security Forces, Inc., against Doris Geneva Greer, at least insofar as Aetna Casualty & Surety Company must defend that suit on behalf of Doris Geneva Greer or pay on her behalf any judgment rendered against her and this court should on this basis dismiss that pending suit.

WHEREFORE, the plaintiff, Aetna Casualty & Surety Company, prays that this court declare that Aetna Casualty & Surety Company has no duty and cannot be liable in connection with the aforementioned lawsuit by Security Forces, Inc., either toward Doris Geneva Greer, as administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, or toward Security Forces, Inc., or its insurer, Security Insurance Company of Hartford. Aetna Casualty & Surety Company further prays that this court make any other orders that it deems appropriate to determine the rights of the parties hereto and to end the litigation arising from the aforementioned automobile accident.

RAINEY, BRITTON,
GIBBES & CLARKSON, P.A.

BY: N. Heyward Clarkson, III
C. Wade Cleveland
Attorneys for Plaintiff

January 12, 1984

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM, PART 22

HANS BIENER, As Administrator, etc., et al.,

Index No. 1635/73

Plaintiffs,

—against—

HYSTRON FIBERS, INC.,

Defendant and Third-Party Plaintiff,

—against—

SECURITY FORCES, INCORPORATED,

Third-Party Defendant and Fourth-Party Plaintiff,

—against—

THE PUBLIC ADMINISTRATOR OF NEW YORK COUNTY, As Administrator of the Goods, Chattels and Credits of Charles Furman Greer, deceased,

Fourth-Party Defendant.

Greenfield, J.:

This is an action for wrongful death and personal injuries aris ing out of an automobile accident which occurred on July 27 1970 in Spartanburg, South Carolina. Plaintiff, Hans Biener, an his children, who were passengers in the automobile, suffered pe sonal injuries and plaintiff Biener's wife, who was also a passenge was killed.

The complaint alleged that the vehicle was being operated by one Charles Greer in a reckless and negligent manner, causing it to go out of control, leave the highway and strike a bridge column support.

Plaintiffs sued only Hystron Fibers, Inc., the owner of the automobile and plaintiff Hans Biener's employer. Hystron impleaded Security Forces, Inc., Greer's employer, with whom it had a contract for guard service. Security, in turn, impleaded the Public Administrator of the State of New York as the personal representative of its deceased employee, Charles Greer.[1] Jurisdiction was obtained over the third and fourth party defendants by attaching certain policies of insurance.

The parties have agreed that plaintiffs are entitled to $450,000 and have submitted to the Court on stipulated facts the various claims for indemnification and have further stipulated that the Court shall consider, as if pleaded, a fifth party complaint by the Public Administrator for indemnification.

It is Hystron's position that pursuant to the contract for guard service it is entitled to indemnification from Security, as the contract specifically provides that Security will hold harmless Hystron for all claims arising as a result of "operations" under the contract. In addition, Hystron contends that pursuant to the contract, Security was obligated to obtain general liability and automobile insurance and that Security caused to be delivered to Hystron a Certificate of Insurance which stated that Security was insured by the Security Insurance Company of Hartford (an unrelated company) under combined general and automobile comprehensive liability policies.

Security claims that Aetna Life & Casualty, which issued a comprehensive automobile policy to Hystron, must pay the $450,000 on behalf of Hystron. Although conceding that Aetna will be subrogated to all rights Hystron may have against Security, Security contends that there is nothing in the contract for guard services which would subject it to liability and further contends that it is not obligated to indemnify Hystron pursuant to the Certificate of Insurance delivered to Hystron on behalf of Secur-

---

[1] The Circuit Court ruled that Greer's estate could not be liable because the Aetna policy is its only undistributed asset. See Moultis v. Degen, 279 S.C. 1, 301 S.E.2d 554 (1983) (a tort action is a claim against an estate and is barred unless an account has been filed within five months after notice, but where a closed estate has a liability insurance policy, the estate may be reopened so that a tort action may be pursued and judgment, if obtained, paid by the policy).

ity. Security further contends that if it is held liable, it is entitled to indemnification from the Estate of its employee Greer, who is covered by the Aetna policy referred to above.

If, as Security contends, it is not obligated to indemnify Hystron, the fourth and fifth party complaints become academic as does the contention that the fourth party complaint should be dismissed. Accordingly, the court will address itself initially to Hystron's claimed right to indemnification from Security.

The parties have submitted to the court the relevant insurance policies and the contract for guard service. Based on the stipulated facts, the court finds that Security is obligated to indemnify Hystron.

The contract for guard services specifically provides that:

> "The contractor [Security] further agrees to defend and hold harmless the Company [Hystron] in connection with any and all claims arising as a result of operations performed by the Contractor under this contract."

Security's contention that Greer was not engaged in "operations" under the contract is untenable in view of the fact that it has been stipulated that "at the time of the accident" Greer was an employee of Security Forces, Inc. and was "in the course of his duties as a security guard at the premises of Hystron Fibers, Inc."

In addition, the cover sheet of the certificate of insurance delivered to Hystron specifically recites that coverage is provided for Security's contractual obligation to defend and hold harmless its customers for operations under its contracts for guard services. On the face of the certificate the following appears:

> "HOLD HARMLESS AGREEMENT #1 on REVERSE SIDE APPLIES"

On the reverse side of the cover sheet, the following notes appear:

> "Note 1 -- The Contractor further agrees to defend and hold harmless the Company in connection with any and all claims arising as a result of operations performed by the Contractor under this contract."

"Note 2 – The Contractor agrees to defend, indemnify and to save harmless the Company in connection with all claims and damages arising as a result of operations performed by the Contractor under this contract."

Based on the foregoing, it is clear that the contractual liability insurance written by Security Insurance Company of Hartford is applicable.

Hystron also contends that it is entitled to indemnification pursuant to paragraph 6(c) of the contract, wherein Security agreed to provide automobile liability insurance for all vehicles, owned, hired or used, provided the vehicle is being used in the business of Security. This paragraph provides an alternative basis for imposition of liability. Security's claim of a waiver of this provision of the contract finds no support in the record. The fact that Hystron obtained its own automobile insurance is not evidence of any waiver nor does it create an estoppel. Security's contention that the automobile liability insurance it obtained does not cover the accident in question is immaterial. Security cannot avoid liability because it failed to obtain the required insurance. Security's additional contention that the required automobile insurance would not apply because the vehicle belonged to Hystron and was being used in the business of Hystron is also without merit in view of the stipulation that Greer, at the time of the accident, was engaged in the course of his duties as a security guard at the Hystron premises.

Security contends that even if it is obligated to indemnify Hystron, it nevertheless is entitled to seek indemnification from the estate of Charles Greer, the driver to whom the responsibility for this accident may be attributed. Such a claim creates a circuity of action since Aetna as Hystron's insurer has to respond to the plaintiffs' damage claims, then as subrogee of Hystron may recover from Security, which in turn seeks a recovery from its employee, Greer, who was, at the driver, insured under the Aetna policy. It appears to the court that such a circular chain of recovery gives rise to a result which cannot be judicially sanctioned. Hystron clearly had a right to be indemnified and held harmless by Security by the acts of the Security employees. Aetna, as its insurer, became subrogated to Hystron's rights and stood in its shoes. It is entitled to assert, just as Hystron would be, that when standing in Hystron's shoes, it too is entitled to be indemnified and held harmless. It would not be "held harmless" if it were compelled to reimburse Security so that Security can pay it.

Hystron took the precaution not only of obtaining the indemnification agreement from Security and a Certificate of Insurance from Security, but also having secured itself from exposure by procuring the Aetna policy for itself and for any other persons using one of its automobiles with its permission. Thus, Hystron would be insured against liability whether one of its employees or whether anybody else using one of its owned or hired automobiles was involved in an accident. The provision covering other persons was for the benefit of Hystron, and no reason appears in law or equity to compel a holding that it is somehow penalized for having this additional coverage. Aetna, in all respects, asserts the same rights as Hystron. Thus, while the insuring clauses guarantee that Hystron would be fully covered with respect to the claims of third parties to whom they would be answerable for the acts of their own employees or of anyone else, permitting the circuity of recovery would totally negate the hold-harmless agreement. As to outsiders, Greer can be considered an ad hoc employee of Hystron. As between Hystron and Security, Greer clearly was an employee of Security and Hystron (and its subrogee) were entitled to be indemnified and held harmless for any liability arising out of the acts of Security's employees, such as Greer. Hystron (and Aetna) therefore have no obligation to reimburse Security by virtue of the fact that their liability policy covered anyone driving with their permission. To the extent that Security may seek indemnification from other assets of the Greer estate, the indemnification agreement is no bar, but this court holds that under the circumstances here presented, Aetna is not obligated to respond to such claims.

In any event, Security, as a non-resident, would not be entitled to a Seider-Roth attachment of the Aetna policy (Donawitz v. Danek, 42 NY 2d 138. Accordingly, the fourth and fifth party complaints are dismissed without prejudice to Security or its insurer commencing an action against Greer's estate in another appropriate jurisdiction, if it be so advised, with the understanding that the Aetna policy herein involved does not constitute one of the assets of that estate.

It is therefore the judgment of this court that the plaintiffs shall be paid the sum of $450,000 by the defendant Hystron Fibers, Inc. and/or its insurance carrier, Aetna Casualty Company, without interest, costs or disbursements. It is adjudged that the third-party defendant, Security Forces, Incorporated of Hartford, shall indemnify defendant Hystron Fibers, Inc. and/or its insurance carrier, Aetna Life & Casualty Company. The fourth and fifth party actions are dismissed in accordance with the decision

heretofore stated. Plaintiffs are to submit the necessary orders of compromise and the payments required hereby are to be made within 30 days as agreed upon by stipulation.

Settle judgment.

Dated: April 6, 1978

J.S.C.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on December 23, 1980

Present – Hon. Arnold L. Fein, Justice Pending
Leonard H. Sandler
David Ross
Arthur Markewich
Vincent A. Lupiano, Justices.

HANS BIENER, as Administrator of the Estate of HEDWIG BIENER, Deceased, SUSANNE BIENER, ULRIKE BIENER' KARIN BIENER, MARTIN BIENER, all individuals under the age of 14 years, by their father and natural guardian HANS BIENER and HANS BIENER, individually,

Plaintiffs,

against

HYSTRON FIBERS, INC.,
Defendant-Respondent. 9430

HYSTRON FIBERS, INC.
Third-Party Plaintiff-Respondent,

against

SECURITY FORCES, INCORPORATED,
Third-Party Defendant-Appellant.

SECURITY FORCES, INCORPORATED,
Fourth-Party Plaintiff-Appellant,

against

THE PUBLIC ADMINISTRATOR OF
NEW YORK COUNTY,
As Administrator of the Goods, Chattels and Credits of
CHARLES FURMAN GREER, Deceased,
Fourth-Party Defendant.

An appeal having been taken to this Court by the appellant from a judgment of the Supreme Court, New York County (Greenfield, J.), entered on August 7, 1979, which adjudged third-party defendant Security Forces, Inc., liable to third party plaintiff Hystron Fibers, Inc. for $450,000 plus interest, and which dismissed the fourth party impleader action brought by Security and a fifth party impleader action without prejudice to such actions in another appropriate jurisdiction but with certain substantive limitations upon such actions,

And said appeal having been argued by Mr. Robert L. Horkitz of counsel for the appellant, and by Mr. Benjamin Vinar of counsel for respondent; and due deliberation having been held thereon, and upon the Opinion of this Court filed herein,

It is unanimously ordered that the judgment so appealed from be and the same is hereby modified, on the law, to delete from the judgment the limitations imposed on future actions derived from the fourth and fifth party actions, and otherwise affirmed, without costs and without disbursements.

ENTER:

JOSEPH J. LUCCHI
Clerk.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Aetna Casualty & Surety	)	
Company, a corporation; and	)	
Doris Geneva Greer, as	)	
Administratrix D.B.N.C.T.A.	)	
of the Estate of Charles	)	
Furman Greer, Deceased,	)	
	)	AMENDED COMPLAINT
Plaintiffs,	)	(NONJURY)
	)	
—vs—	)	84-CP-42-98
	)	
Security Forces, Inc.; and	)	
Security Insurance Company	)	
of Hartford,	)	
	)	
Defendants.	)	

The plaintiffs, complaining of the defendants, will show to the court:

FOR A FIRST CAUSE OF ACTION

I

The plaintiff, Aetna Casualty & Surety Company, is a corporation organized and existing under the laws of the State of Connecticut and is engaged in writing insurance in the State of South Carolina. The plaintiff, Doris Geneva Greer, is a citizen and resident of Spartanburg County, South Carolina and is the duly appointed administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, as will more fully appear by reference to the probate records of Spartanburg County, South Carolina. The defendant, Security Forces, Inc., is a corporation organized and existing under the laws of the State of North Carolina and does business in Spartanburg County, South Carolina. The defendant, Security Insurance Company of Hartford is a corporation organized and existing under the laws of the State of Connecticut and is engaged in writing insurance in the State of South Carolina.

II

The plaintiffs bring this action pursuant to the provisions of S.C. Code Ann. § § 15-53-10 through -140, which allow this court to inquire into and determine the rights and obligations of the parties under the facts hereinafter set forth.

III

At all times pertinent hereto Aetna Casualty & Surety Company had in force a comprehensive automobile liability insurance policy insuring Hystron Fibers, Inc.

IV

On July 27, 1970, Charles Furman Greer, deceased, was an employee of Security Forces, Inc. Security Forces, Inc., was under contract to provide security services for Hystron Fibers, Inc. While acting within the scope and course of his employment as a security guard for Security Forces, Inc., Charles Furman Greer was driving a vehicle owned by Hystron Fibers, Inc. On July 27, 1970, while Charles Furman Greer was driving this vehicle, it was involved in an accident on Interstate Highway 85 near Spartanburg, South Carolina. In this accident the passengers in Greer's vehicle, Suzanne Biener, Ulrike Biener, Karin Biener, Martin Biener, and Hans Biener suffered personal injuries and another passenger, Hedwig Biener, was killed.

V

On November 16, 1971, Hans Biener, as representative of Hedwig Biener, as father and guardian of the minor passengers, and for himself, instituted against Hystron Fibers, Inc., an action in the Supreme Court of the State of New York for the wrongful death of Hedwig Biener and for his injuries and those of his children. On April 2, 1974 Hystron Fibers, Inc., filed in the same court a third-party complaint against Security Forces, Inc., seeking to require Security Forces, Inc., to pay for any damages for the injuries and death of the passengers of the vehicle.

VI

On April 6, 1978, the court rendered a judgment in the sum of Four Hundred Fifty Thousand and 00/100 ($450,000.00) Dol-

lars to be paid to the plaintiffs by the defendant, Hystron Fibe Inc., and/or its insurance carrier, Aetna Casualty & Surety Co pany. The court also adjudged that the third-party defenda Security Forces, Inc., should indemnify the defendant, Hystr Fibers, Inc., and/or its insurance carrier, Aetna Casualty & Sure Company, for the amount of the judgment. A copy of this ju ment of the Supreme Court of the State of New York is attach to this amended complaint and made a part hereof by reference.

VII

On December 23, 1980, the Appellate Division of t Supreme Court of the State of New York affirmed, with so modification, the judgment of the Supreme Court of the State New York issued on April 6, 1978. A copy of this judgment the Appellate Division is attached to this amended complaint a made a part hereof by reference.

VIII

On information and belief, on June 22, 1981, Securi Forces, Inc., and/or the insurer, Security Insurance Company Hartford, paid the amount of the judgment together with intere thereon to the date of payment in the total sum of Five Hundr Forty Thousand Seven Hundred Fifty-five and 10/1 ($540,755.10) Dollars.

IX

On October 3, 1983, Security Forces, Inc., instituted in t Spartanburg County Court of Common Pleas an action, which presently pending, against Doris Geneva Greer, as administratr d.b.n.c.t.a. of the Estate of Charles Furman Greer, decease demanding under the theory of common-law indemnity that be reimbursed by the Estate of Charles Furman Greer for the sur expended on account of the alleged negligence of Charles Furm Greer and also demanding repayment for the costs of defendi the third-party complaint brought against Security Forces, In by Hystron Fibers, Inc. In this action by Security Forces, Inc., also requested prejudgment interest and costs.

X

Doris Geneva Greer, as administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, has called upon Aetna Casualty & Surety Company under the automobile insurance policy issued to Hystron Fibers, Inc., to defend the action brought against her by Security Forces, Inc., and to pay on her behalf as administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, any judgments that might be rendered against her in that action.

XI

The sole possible asset of the Estate of Charles Furman Greer, deceased, is the insurance policy that Aetna Casualty & Surety issued on the Hystron car that Mr. Greer was driving at the time of his death.

XII

Under the comprehensive automobile liability insurance policy by which Aetna Casualty & Surety Company insured Hystron Fibers, Inc., Aetna Casualty & Surety Company is subrogated to all rights of recovery that Hystron Fibers, Inc., has against any person or organization.

XIII

In the contract by which Security Forces, Inc., agreed to provide security services for Hystron Fibers, Inc., Security Forces agreed to "defend and hold harmless" Hystron Fibers, Inc., "in connection with any and all claims arising as a result of operations performed by" Security Forces, Inc., under the contract.

XIV

Under the terms of this contract, Aetna Casualty & Surety Company, as subrogee to all rights of Hystron Fibers, Inc., is entitled to recover from Security Forces, Inc., all sums paid by Aetna Casualty & Surety Company in connection with the accident of July 27, 1970.

XV

To require Aetna Casualty & Surety Company to defend the suit that Security Forces, Inc., brought against Doris Geneva Greer, as administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, and to hold Aetna Casualty & Surety Company liable for any judgment arising from that suit, results in an endless circuity of action and deprives Hystron Fibers, Inc., of the benefit of the contract that it negotiated with Security Forces, Inc.

XVI

To avoid this circuity of action and end the litigation over the aforementioned automobile accident, this court should enforce the terms of the contract between Hystron Fibers, Inc., and Security Forces, Inc., and declare that the contract precludes any further duty or liability by Aetna Casualty & Surety Company toward any of the defendants in this lawsuit on the issues arising from Charles Furman Greer's accident of July 27, 1970.

XVII

If Aetna Casualty & Surety Company cannot be held liable to the defendants, the Estate of Charles Furman Greer, deceased, has no assets, so that this court should declare that it also cannot be held liable to the defendants on the issues arising from Charles Furman Greer's accident of July 27, 1970.

XVIII

A justiciable controversy exists between the parties to this action arising out of the complaint filed by Security Forces, Inc., and out of the insurance policy referred to above.

FOR A SECOND CAUSE OF ACTION

I

The plaintiffs incorporate in this second cause of action all allegations of the first cause of action not inconsistent herewith.

II

Pursuant to the contract in which Security Forces, Inc., agreed to provide security services for Hystron Fibers, Inc., Security Forces, Inc., also agreed to provide automobile liability insurance "for all vehicles owned, hired or used" in the business of Security Forces, Inc. On information and belief, Security Forces, Inc., procured this insurance.

III

As subrogee to the rights of Hystron Fibers, Inc., Aetna Casualty & Surety Company is entitled to the benefits of this agreement by Security Forces, Inc., to provide this automobile insurance.

IV

To ensure Aetna's rights under its subrogor's contract, this court should declare that the contract precludes any further duty or liability by Aetna Casualty & Surety Company toward any of the defendants in this lawsuit on the issues arising from Charles Furman Greer's accident of July 27, 1970.

FOR A THIRD CAUSE OF ACTION

I

Aetna Casualty & Surety Company incorporates in this third cause of action all allegations of the first two causes of action not inconsistent herewith.

II

In rendering their aforementioned judgments, the courts of the State of New York had jurisdiction over the same parties, or their privies, as are before this court in this suit, they had jurisdiction over the same subject matter as is before this court in this suit, and they adjudicated on the merits the same questions raised in this suit. Therefore, under article IV, section 1 of the Constitution of the United States, this court must accord those judicial proceedings full faith and credit and give them in this State the same effect to which they are entitled in the State of New York.

III

On information and belief, the effect of these judicial proceedings of the courts of the State of New York is to preclude any duty or liability by Aetna Casualty & Surety Company toward any of the defendants in this lawsuit on any issues arising from the automobile accident of Charles Furman Greer on July 27, 1970.

IV

Under any or all of the doctrines of res judicata, collateral estoppel, estoppel by judgment, and law of the case, the aforementioned judgments of the courts of the State of New York preclude holding the Aetna Casualty & Surety Company and Doris Geneva Greer, as administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, liable to the defendants in the situation outlined in the complaint of Security Forces, Inc., against Doris Geneva Greer. To allow Security Forces, Inc., to recover in that action from Aetna Casualty & Surety Company (on behalf of Doris Geneva Greer, as administratrix of the Estate of Charles Furman Greer, deceased) is to negate the valid judicial proceedings of the State of New York.

V

On information and belief, the judicial proceedings of the courts of the State of New York bar the pending suit by Security Forces, Inc., against Doris Geneva Greer.

WHEREFORE, the plaintiffs, Aetna Casualty & Surety Company, and Doris Geneva Greer, as administratrix d.b.n.c.t.a. of the Estate of Charles Furman Greer, deceased, pray that this court declare that they have no duty and cannot be liable in connection with the aforementioned lawsuit by Security Forces, Inc., toward either Security Forces, Inc., or its insurer, Security Insurance Company of Hartford. The plaintiffs further pray that this court make any other orders that it deems appropriate to determine the rights of the parties hereto and to end the litigation arising from the aforementioned automobile accident.

RAINEY, BRITTON,
GIBBES & CLARKSON, P.A.

BY: N. Heyward Clarkson, III
C. Wade Cleveland
Attorneys for Plaintiffs

April 6, 1984

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Aetna Casualty & Surety Company, a corporation; and Doris Geneva Greer, as Administratrix D.B.N.C.T.A. of the Estate of Charles Furman Greer, Deceased,	)	MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
Plaintiffs,	)	84-CP-42-98
—vs—	)	
Security Forces, Inc.; and Security Insurance Company of Hartford,	)	
Defendants.	)	

This case is before the court today on plaintiffs' motion for summary judgment. The suit is an action for declaratory judgment in which the plaintiffs request this court to declare that they cannot be held liable to the defendants in any action arising from an automobile accident that occurred on July 27, 1970. Such an action by the defendant, Security Forces, Inc., is presently pending in the Court of Common Pleas for Spartanburg County. The plaintiffs base their motion for summary judgment on the defendants' response to their request for admissions and on an affidavit previously filed with the court. As these materials and this memorandum show, no genuine issue of material fact exists and the plaintiffs are entitled to summary judgment as a matter of law.

STATEMENT OF FACTS

The automobile accident giving rise to this and to the related action referred to above occurred near Spartanburg on July 27, 1970. All seven passengers of a vehicle were injured in a single-car accident. Six of the passengers were members of the Hans Biener family, which was on its way to the airport to leave Spartanburg

and move to New York City. Mrs. Hedwig Biener died shortly after the accident. The driver of the car, Charles Furman Greer, died several weeks after the accident from injuries he received in it.

As part of his job as a security guard at Hystron Fibers (now Hoechst), Mr. Greer was using a Hystron car to drive the Biener family to the airport. Mr. Biener was a Hystron employee. Mr. Greer, however, worked for Security Forces, Inc., which was under contract with Hystron to provide security guard services. Driving Hystron vehicles was part of the usual duties of the Security Forces guards who worked at Hystron.

On November 16, 1971, Mr. Biener, as representative of his deceased wife, as guardian of his minor children, and for himself, instituted an action in the State of New York for the wrongful death and injuries received in the accident. He named as the defendant his employer, Hystron Fibers. On April 2, 1974, Hystron Fibers filed a third-party complaint against Security Forces seeking to require that company to reimburse Hystron for any damages that it was required to pay to the Biener family.

Eventually, Hystron and Security Forces reached a settlement with Mr. Biener. Under the terms of this settlement, Mr. Biener received $450,000.00. Hystron and Security Forces also agreed to submit to the New York court on stipulations the question of which of them would be liable for paying the $450,000.00 to the Biener family.

On April 6, 1978, the New York court held, and the New York appellate court later affirmed, that Hystron and/or its insurance company, Aetna Casualty and Surety Company, was liable for the $450,000.00, plus interest, but also held that Security Forces, the third-party defendant, and/or its insurer, Security Insurance Company of Hartford, must reimburse Hystron and/or Aetna for the amount paid to the Biener family. The trial court based Hystron's and Aetna's right to indemnity on three separate grounds: (1) the hold harmless clause in the contract for security guard services between Hystron and Security Forces; (2) the hold harmless agreement included in the certificate of insurance delivered by Security Forces to Hystron; and (3) the paragraph of the contract between Security Forces and Hystron that required Security Forces to provide automobile liability insurance for all vehicles owned, hired, or used by Security Forces in conducting its business with Hystron. The opinions of the courts, the contract for guard services, and the certificate of insurance are all before this court as part of the defendants' response to the plaintiffs' request for admission.

On June 22, 1981, Security Forces and/or Security Insurance paid the amount of the judgment with interest. The amount of the payment was $540,775.10. Dissatisfied with the outcome of the New York proceedings, however, Security Forces filed in Spartanburg County on October 3, 1983 the companion lawsuit to the instant case. That suit seeks reimbursement from the Estate of Charles Furman Greer of the money that Security Forces or its insurer paid in satisfaction of the judgment in New York, plus the sums expended in defense of that action, plus interest on these amounts. The basis of Security Forces' cause of action is common-law indemnity.

Because Mr. Greer died in 1970, his estate is now closed. The administratrix of the estate, Doris Geneva Greer, has called upon the Aetna Casualty and Surety Company to defend that action brought against the estate of her deceased husband. Since the Aetna insurance policy is the only possible asset of the closed estate, the companion case is obviously one in which Security Forces seeks to reach in South Carolina the same Aetna policy that the New York court refused to make available to it.

In this action for declaratory judgment, Aetna requests that this court declare, in conjunction with the courts of New York, that Aetna cannot be held liable to Security Forces in any action arising from the July 1970 automobile accident.

DISCUSSION

In considering the respective rights and positions of the parties to these lawsuits, one must keep in mind the basic principle of subrogation: an insurer who pays the insured the amount of his loss "becomes subrogated pro tanto by operation of law to whatever rights the insured may have against the wrongdoer." Calvert Fire Insurance Company v. James, 114 S.E.2d 832, 835 (S.C. 1960). Hystron's insurer and subrogee, Aetna, is thus the privy of Hystron, and, similarly, Security Insurance is the privy of Security Forces. Each of these parties was, in effect, before the New York courts that rendered the opinions referred to above. Consequently, Hystron and Aetna, on the one hand, and Security Forces and Security Insurance, on the other, as subrogors and subrogees, can be considered identical entities who, in this lawsuit, share the same rights against the other pair.

The Constitution of the United States says, "Full faith and credit shall be given in each state to the . . . judicial proceedings of every other state." U.S. Const. art. IV, section 1. Because of this provision of the Constitution, when "a judgment rendered by a court having jurisdiction of the cause and the parties is challenged in another state," the courts in the other state are precluded from "any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." Milliken v. Meyer, 311 U.S. 457, 462 (1940). Thus, "[b]ecause there is a full faith and credit clause a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment." Magnolia Petroleum Company v. Hunt, 320 U.S. 430, 440-41 (1943) (both cases quoted in Hamilton v. Patterson, 115 S.E.2d 68, 70 (S.C. 1960)).

Security Forces now attempts to do precisely that. Aetna has already paid its liability arising from the Biener lawsuit and, by order of the New York courts, was indemnified for its loss by Security Forces. Nevertheless, in the companion action to this one, Security Forces now seeks to undo this court-ordered indemnification by seeking reimbursement from Aetna of the money the New York court previously required that it pay to Aetna. Yet, to paraphrase what the Supreme Court said in Magnolia Petroleum Company v. Hunt, id., because there is a full faith and credit clause, Security Forces, the third-party defendant in New York, may not a second time challenge the validity of the right of Hystron/Aetna, the third-party plaintiff in New York, which right has ripened into a judgment in New York.

Since Aetna, Hystron, Security Forces, and Security Insurance are bound in the State of New York by valid judgments rendered there, they are, under the full faith and credit clause, bound by those judgments in precisely the same manner in this State. Whatever the effect in New York of those judicial proceedings, that effect is the same on these parties in South Carolina.

The outcome of the New York appellate court is clear. It affirmed the judgment of the trial court with one modification, the deletion from that judgment of "the limitations imposed on future actions derived from the fourth and fifth party actions." Clearly, this modification changed in no way the judgment of the trial court that Hystron or its insurer-subrogee, Aetna, was entitled to be indemnified by Security Forces or its insurer-subrogee, Security Insurance, for the amount that Hystron agreed to pay the New York plaintiff, Hans Biener. The practical outcome of the New

York proceedings, then, was that Mr. Biener received money from Aetna and Aetna was reimbursed by Security Forces or its insurer, Security Insurance. The courts of the State of New York ordered this, and, as the affidavit of Gloria-Jeanne Wilson indicates, the parties complied with these judicial proceedings.

Since the valid judicial proceedings of the State of New York resulted in Security Insurance's having to indemnify Aetna, Security Insurance and its insured, Security Forces, have no right to come to South Carolina and seek to undermine the New York proceedings by seeking reimbursement from Aetna of the same money that those companies had to pay to Aetna by order of the courts of the State of New York. This is precisely the evil that the full faith and credit clause was designed to prevent. If this court does not apply the full faith and credit clause and declare that Aetna cannot be held liable to Security Forces or its insurer, the possibility exists that Security Forces and its insurer will render nil the valid judicial proceedings of the State of New York.

Of course, in seeking to undo the New York proceedings, Security Forces did not name Hystron or Aetna. Rather, the companion suit is against the now closed Estate of Charles Furman Greer. In effect, however, the suit is against Aetna since the Aetna insurance policy covering the Hystron vehicle is the only possible undistributed asset of that estate. In short, except for Aetna, Security Forces would have no reason to sue the estate.

Although the "full faith and credit" clause precludes this court from inquiring into the "logic or consistency" of the attached judicial proceedings of the State of New York, Hamilton v. Patterson, 115 S.E.2d at 70, the reasoning of the New York trial court, affirmed by the New York appellate court, applies with equal force to Aetna's present action for declaratory judgment. Thus, if this court does not deem the full faith and credit clause applicable, additional legal reasons exist for granting the declaratory judgment that Aetna requests.

First, the "Contract for Guard Service," whose genuineness the defendants have admitted, contains a provision stating:

> The Contractor [Security Forces] further agrees to defend and hold harmless the Company [Hystron] in connection with any and all claims arising as a result of operations performed by the Contractor under this contract.

In the New York action, Security Forces stipulated that "at the time of the accident" Charles Greer was an employee of Security Forces and was "in the course of his duties as a security guard at the premises of Hystron Fibers, Inc."

Moreover, as part of its performance of this hold harmless agreement, Security Forces had on the cover sheet of the certificate of insurance that it delivered to Hystron a provision stating: "HOLD HARMLESS AGREEMENT #1 ON REVERSE SIDE APPLIES." On the reverse side of the cover sheet was written:

> Note 1 – The contractor further agrees to defend and hold harmless the company in connection with any and all claims arising as a result of operations performed by the contractor under this contract.
>
> Note 2 – The contractor agrees to defend, indemnify and to save harmless the company in connection with all claims and damages arising as a result of operations performed by the contractor under this contract.

The effect of these provisions is as compelling in this court as in the New York court. Part of the bargained-for contract between Hystron and Security Forces was that Security Forces would assume liability for all claims stemming from the work that Security Forces contracted with Hystron to perform. Moreover, Security Forces purchased insurance from Security Insurance to cover these claims for which Hystron was to be held harmless. Aetna, as Hystron's subrogee, stands in Hystron's shoes and is entitled to the benefit of these hold harmless agreements. The effect of these clauses is clearly to make Security Forces, rather than Hystron or Aetna, liable to Hans Biener. The New York court so found, and the clear language of the contracts requires this court to do so as well.

Another part of the contract between Security Forces and Hystron requires Security Forces to provide automobile liability insurance for all vehicles "owned, hired, or used" in the business of Security Forces. Clearly, this contractual provision was intended for Hystron's benefit. While Hystron also purchased insurance for its own vehicles, the terms of the contract are clear that when Security Forces uses a Hystron vehicle in the conduct of its business at Hystron, Security Forces is to provide the insurance and not Hystron. Security Forces' insurer, then, should be liable for paying the judgment in favor of the Biener family and not Hystron or its insurer, Aetna.

Because this is true, this court should enforce the terms of the contract between Hystron and Security Forces by giving Hystron's subrogee, Aetna, the benefit of Hystron's bargain. This court should declare that Aetna can have no liability to Security Forces or to Security Insurance. Security Forces and, therefore, its subrogee, Security Insurance, agreed to insure the vehicle involved in the accident giving rise to this action. This court should make sure that these parties comply with that agreement.

When the New York appellate court affirmed the trial court, it deleted the limitations the lower court had imposed on the fourth- and fifth-party actions. The trial court had stated that while Security Forces might seek indemnification from the Greer estate, "Aetna is not obligated to respond to such claims." Trial Court Opinion at 8. Aetna does not question the appellate court's deletion of this limitation.

Nevertheless, the trial court's justification for imposing the limitation applies in this present action in which, unlike in New York, both the estate and Aetna are properly before this court, more or less as identical parties. First, the New York court felt that Aetna, having inherited Hystron's rights, was entitled to assert those same rights against Security Forces. Thus, the court said:

> Hystron clearly had a right to be indemnified and held harmless by Security [Forces] by [sic] the acts of the Security [Forces] employees. Aetna, as its insurer, became subrogated to Hystron's rights and stood in its shoes. It is entitled to assert, just as Hystron would be, that when standing in Hystron's shoes, it too is entitled to be indemnified and held harmless. It would not be "held harmless" if it were compelled to reimburse Security [Forces] so that Security [Forces] can pay it.

Id. at 6-7.

The presence of the Greer estate in the companion case does not affect the right of Aetna to indemnity. That right either exists or it does not exist. In this case, the New York court clearly found that it exists. Obviously, if one court declares that a party has a right to indemnity, another court should uphold that right. Ensuring Aetna's right to indemnity is even more compelling since our own court recently reinforced the right of one party to be indemnified by another. Stuck v. Pioneer Logging Machinery, Inc., 301 S.E.2d 552 (S.C. 1983).

The second reason that the New York trial court believed Aetna should not have to respond to a claim by Security Forces also applies in this action. To permit Security Forces to recover back from Aetna what Aetna has already paid Security Forces is to sanction a circuity of action. Whether Aetna pays directly or through the estate, the effect is still circular. Moreover, the circuity is theoretically endless because any sum that Aetna must pay to Security Forces through the estate of Greer, it can in turn recover back from Security Forces by enforcing its rights as Hystron's subrogee. The New York court has already recognized these rights and has stated: "Hystron (and its subrogee) were entitled to be indemnified and held-harmless for any liability arising out of the acts of Security's employees, such as Greer." Trial Court Opinion at 7. Just as Aetna had the right to enforce this judgment in the past, so will it have the clear right in the future to demand once more from Security Forces that it be indemnified.

As the above discussion clearly demonstrates, this court has ample reason for granting the declaratory relief that Aetna requests in this action. Moreover, once this court grants that declaratory relief and Aetna can no longer be held liable to the defendants, the effect is that the Estate of Charles Furman Greer can also no longer be held liable to the defendants. Without the Aetna insurance policy, the estate contains nothing that either of the defendants can recover. For that reason, this court should also declare that the Estate of Charles Furman Greer cannot be liable to the defendants.

CONCLUSION

For the reasons stated above, this court should grant the declaratory relief requested by Aetna and the Estate of Charles Furman Greer.

RAINEY, BRITTON,
GIBBES & CLARKSON, P.A.

BY: N. Heyward Clarkson, III
C. Wade Cleveland
Attorneys for Plaintiffs

July 9, 1984

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
HONORABLE JAMES B. STEPHEN, JUDGE

CASE NO. 84-CP-24-98

Aetna Casualty & Surety Company, a corporation; and Doris Geneva Greer, as Administratrix D.B.N.C.T.A. of the Estate of Charles Furman Greer, Deceased,

Plaintiffs-Respondents.

vs.

Security Forces, Inc.; and Security Insurance Company of Hartford,

Defendants-Appellants.

BRIEF OF RESPONDENTS

N. HEYWARD CLARKSON, III
C. WADE CLEVELAND
RAINEY, BRITTON, GIBBES & CLARKSON, P.A.
Post Office Box 10589
Greenville, South Carolina 29603

ATTORNEYS FOR RESPONDENTS

Table of Contents

I. Questions Presented ii (A-79)

II. Table of Authorities iii (A-80)

III. Statement of Facts 1 (A-81)

IV. Argument 3 (A-82)

A. Clear Contractual Agreements Entered into by Security Forces and Security Insurance Require Those Parties To Bear Ultimate Liability for Injuries Arising from a 1970 Automobile Accident. 3 (A-82)

B. Allowing Aetna To Be Liable to Security Insurance for the Claim for Which the New York Courts Held Security Insurance Liable to Aetna Creates a Circuity of Action and Unconstitutionally Undermines the Valid New York Judgment. 18 (A-90)

V. Conclusion 24 (A-93)

I. Questions Presented

A. Whether clear contractual provisions and assurances by which parties agree to be liable for claims arising from certain operations make those parties liable for claims arising from those operations. (Exceptions II, III, IV, VI, VII, VIII, IX, X, XI, XIV, XV, IXI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXXVII, XXXVIII, XXXIX, XL, XLI.)

B. Whether it is circuitous and unconstitutional to allow the courts of one state to order a party to pay back to a second party the money that the courts of another state have ordered the second party to pay to the first. (Exceptions I, V, VII, VIII, XII, XIII, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XLI).

II. Table of Authorities

Constitution

Constitution of the United States of America, art. IV, section 1.

Statutes

South Carolina Code Annotated § 21-15-640 (1976).

Cases

Builders and Manufacturers Mutual Casualty Company v. Preferred Automobile Insurance Company, 118 F.2d 118 (6th Cir. 1941). 14 (A-88)

Calvert Fire Insurance Company v. James, 236 S.C. 431, 114 S.E.2d 832 (1960). 7 (A-84)

Hamilton v. Patterson, 236 S.C. 481, 115 S.E.2d 68 (1960). 22 (A-92)

Magnolia Petroleum Company v. Hunt, 320 U.S. 430 (1943). 21 (A-92)

Moultis v. Degen, 279 S.C. 1, 301 S.E.2d 554 (1983). 12 (A-86)

Milliken v. Meyer, 311 U.S. 457 (1940). 21 (A-92)

Sherwood Trucking, Inc. v. Carolina Casualty Insurance Company, 552 F.2d 568 (4th Cir. 1977). 12 (A-87)

Thomas-McCain, Inc. v. Siter, 268 S.C. 193, 232 S.E.2d 728 (1977). 5 (A-83)

Wise v. Picow, 232 S.C. 237, 101 S.E.2d 651 (1958). 8 (A-85)

III. STATEMENT OF THE FACTS

This case is a declaratory judgment action in which Aetna Casualty and Surety Company seeks a declaration that it cannot be liable to Security Forces, Incorporated or its insurer, the Security Insurance Company of Hartford, for any claims arising from an automobile accident that occurred in 1970. Although Respondents agree with the "Statement of Facts" in the Appellants' Brief, the circuit court relied on additional findings of fact that Appellants omitted from their statement.

In using the Hystron vehicle to drive the Biener family to the airport in July 1970, Mr. Greer was performing one of his usual duties as a Security Forces guard stationed at Hystron. (Tr. 39) Thus, he was performing pursuant to the contract between Security Forces and Hystron. (Tr. 39)

Following institution of legal proceedings by the Biener family on account of the accident that occurred while Mr. Greer was performing his duties as a Security Forces employee, Hystron and Security Forces agreed to submit to the New York court the issue of which of them would be liable for the claims that the Bieners made. (Tr. 40) The New York court determined that the $450,000.00 for which Hystron and Security Forces had agreed to settle the Biener claims should be paid by Hystron's insurer, Aetna. The judgment of the New York court, however, was that Security Forces and its insurer, Security Insurance, should reimburse Aetna for the amount paid to the Bieners. Thus, Aetna paid to the Bieners the amount of the settlement, and Security Insurance reimbursed that amount to Aetna. (Tr. 37, 41)

In Security Forces' indemnity action against the Greer Estate, the lawsuit that underlies this declaratory judgment action, Security Forces seeks to recover from the Estate precisely what the New York court ordered Security Forces and Security Insurance to pay to Aetna. (Tr. 41-42) Since the Greer Estate has been closed for many years, it presently has no assets except for the possibility that the Aetna insurance policy issued to Hystron constitutes one. (Tr. 42) Thus, the underlying indemnification lawsuit seeks reimbursement from Aetna, albeit through the Estate, of the same liability that the courts of the State of New York ordered Security Forces and Security Insurance to pay to Aetna.

In addition to the statement of facts in the Appellants' Brief, Respondents also rely on the circuit court's "Findings of Fact," (Tr. 38-42) which sets forth in fuller detail the complicated factual situation underlying this declaratory judgment action.

IV. ARGUMENT

A. Clear Contractual Agreements Entered Into By Security Forces and Security Insurance Require Those Parties To Bear Ultimate Liability for Injuries Arising from the 1970 Automobile Accident.

Focusing on the contractual agreements of the parties in this fifteen-year-old dispute and seeking to effectuate the intentions expressed therein, the circuit court correctly concluded that the ultimate liability for claims arising from the 1970 automobile accident lay with Security Forces and its insurer, Security Insurance Company. This decision comports with an earlier judgment of the courts of the State of New York. These judicial decisions affirm Aetna's position that Appellants assumed liability for the Bieners' claims and that this assumption precludes Aetna's liability to them, either through Hystron or through the Greer Estate.

Despite Appellants' efforts to convert this action into something else, it remains a declaratory judgment action in which Aetna and the Estate seek to establish in South Carolina what the New York courts announced: the liability of Security Forces and Security Insurance, rather than Aetna, for the Biener claims. To understand the inappropriateness of Appellants' analysis of this case and to appreciate the correctness of the circuit court's decision require a simple inquiry into the real parties of interest in the action from which this declaratory action arises. In that suit, Security Forces sued the Greer Estate claiming that it seeks to enforce against it the "common law right of indemnification aris[ing] out of the employer-employee relationship for losses occasioned by the employee's wrongful conduct for which the employer is called upon to pay." (Brief at 2) Such a fiction, although technically accurate, unnecessarily obscures the relationships underlying that action and irrevocably ignores the intentions of those who sought, prior to the 1970 accident, to allocate precisely the risk that ripened into a claim in that mishap.

First, Security Forces has no interest in recovering from anyone because of the accident. It has lost nothing and was unaware for weeks that Security Insurance had even brought, in the name of Security Forces, the indemnification action against the Estate. Clearly, Security Insurance, who paid for the Biener claims under the New York judgment, is the party interested in recovering what the New York court ordered it to pay to Aetna. Equally clearly, Security Insurance desires no judgment against the Greer Estate

per se, for the Estate has no assets – no assets except, possibly, the Aetna Insurance policy that Hystron purchased. Were it not for that policy, Security Insurance would not bring suit against an estate without assets and closed for many years. Thus, the parties with an actual interest in this action and the underlying indemnification suit are the two insurers, Aetna and Security Insurance.

Yet these are the same insurers that the New York court dealt with when, on the basis of the contractual agreements pertaining to these actions, it ordered Security Insurance to reimburse Aetna for the Biener claims. Not surprisingly, the South Carolina Circuit Court examined the same contracts and also concluded that liability lay with Security Insurance rather than with Aetna. Consequently, the circuit court held that Aetna, and, derivatively, the Greer Estate, could not be placed in a position of possible liability to Security Insurance; that would be a useless exercise since the agreements precluded their liability to Security Insurance under the facts of this dispute.

In interpreting contracts, the most basic guidelines for a court are to respect the relationships of the parties and to effectuate their intentions. E.g., Thomas-McCain, Inc. v. Siter, 268 S.C. 193, 232 S.E.2d 728, 729 (1977). In the present action, the circuit court found three separate indications that the parties intended that Security Insurance, through Security Forces, bear liability for the Biener claims. First, Security Forces promised Hystron that it would "defend and hold [it] harmless . . . in connection with any and all claims arising as a result of operations performed by [Security Forces] under [the] contract." (Tr. 30). Second, Security Forces agreed to "obtain, pay for, and keep in force" general liability insurance for "[b]odily injury to a person . . . caused by any operations of Security Forces, Incorporated, for which it may be liable . . . " and automobile liability insurance "for all vehicles owned, hired or used . . . in the business of Security Forces, Inc." (Tr. 29).

Finally, in compliance with its covenant "to furnish certificates evidencing that such insurance is in effect" (Tr. 29), Security Forces had its insurer present such a certificate to Hystron. In that certificate, Security Insurance notified Hystron that it had in effect policies insuring Security Forces' operations at Hystron. Among the coverages certified to was "Comprehensive (combined General and Automobile)." (Tr. 32) Moreover, Security Insurance specifically assured Hystron that Security Forces would "defend and hold harmless [Hystron] in connection with any and all

claims arising as a result of operations performed by [Security Forces] under" the contract. (Tr. 32-33) Since it had issued to Security Forces an insurance policy covering the liability Security Forces assumed in its contract with Hystron, Security Insurance was obviously in a position to make to Hystron this assurance that Hystron would be held harmless.

Because of this series of specific promises and assurances by both Security Forces and Security Insurance, the circuit court (Tr. 45-46) and the New York courts (Tr. 11, 12) found that Security Forces and/or its insurer, Security Insurance, had agreed to be liable for claims such as those made by the Bieners that arose from the operations of Security Forces at Hystron. Yet, again as the circuit court found, if Aetna is placed in a position of possible liability to Security Insurance for the Biener claims, these contractual provisions, which so clearly place liability on Security Insurance, are nullified. Neither Security Forces nor Security Insurance needed to spend the time required to negotiate and prepare the contracts if, when the risks they sought to allocate and the liability they sought to place actually came into existence, their intentions were to be ignored and Aetna is held liable.

In legal terms, Aetna, as the subrogee of Hystron, is entitled to assert whatever rights Hystron has against Security Forces and Security Insurance, both of whom assured Hystron that it would be held harmless for claims arising from such Security Forces operations as Greer's accident in 1970. Calvert Fire Insurance Company v. James, 236 S.C. 431, 435, 114 S.E.2d 832, 835 (1960). In this declaratory judgment action, Aetna seeks only to assert those rights; since Hystron is entitled to indemnity from Security Insurance, Aetna is also. Otherwise, Aetna is deprived of its rights as Hystron's subrogee.

Contrary to Appellants' suggestions (Brief at 4, 6, 10), "[l]egal subrogation is not dependent upon contract," but is an equitable doctrine that flows from

> principles of natural justice; its purpose is to require the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it; and it is to be applied according to the dictates of equity and good conscience in the light of the actions and relationships of the parties.

Id. Aetna asks nothing more than adherance to these principles. Since Security Forces and Security Insurance agreed to be liable for precisely the sort of claims the Bieners asserted, "equity and good conscience" demand that they bear this liability and not shift it to Aetna by use of the employer-employee fiction or by any other means. This is simply inequitable under the facts of this case.

Moreover, Aetna is clearly a third-party beneficiary of these Hystron/Security Forces/Security Insurance agreements, and is entitled to have them enforced. Wise v. Picow, 232 S.C. 237, 244, 101 S.E.2d 651, 655 (1958). Since Hystron had insurance on the automobile Greer was driving, the only reason for its demanding from Security Forces the hold harmless and insurance covenants agreed upon was to relieve its own insurer, Aetna, of liability when the person giving rise to a claim was a Security Forces employee. In other words, as long as Aetna insured Hystron, Hystron had no need of the hold harmless and insurance covenants. But since Hystron demanded this additional protection anyway, it can only have been for the benefit of Aetna.

Appellants argue that Hystron paid Aetna a premium for Aetna's insuring of permissive users such as Greer. (Brief at 7.) Yet Appellants know nothing of the amount of the premium that Hystron paid to Aetna. Rather than assume, as do Appellants, that the premium was based on use by any and every permissive user, one could more logically conclude that Hystron paid a lower premium because the most likely permissive users, other than Hystron employees, were the employees of Security Forces. Yet these permissive users were insured under the Security Insurance policy. Security Forces and Security Insurance certainly promised that they would bear liability for the actions of these users, and common sense dictates that if Security Forces and Security Insurance bore the liability, Hystron, and any insurer that it contracted with for its own protection, would not.

Thus, the contractual agreements in this case are clear. They reveal an effort to allocate the risk of an accident such as the one that occurred in 1970 while Greer was driving a Hystron vehicle. The outcome of that allocation of risks is that as between Hystron, Aetna, Security Forces, and Security Insurance, Security Insurance would bear ultimate liability. Both the New York Courts and the South Carolina Circuit Court determined to hold Security Insurance to this outcome. Yet Security Forces complains; it complains, in essence, because the courts of two states have held that contracts, agreements, and assurances of its own making bind it in

a situation precisely like that for which it agreed to be bound. Security Insurance is simply upset that it now has to do what it previously agreed to do.

Contrary to Appellants' assertions (Brief at 4, 5), then, the underlying indemnity action has much to do with the hold harmless agreement between Hystron and Security Forces, and the Hystron/Security Forces/Security Insurance contracts are not "irrelevant" to Aetna's obligations in this dispute. They are, in fact, dispositive. Consequently, the circuit court's order that Appellants comply with their own agreements is both equitably proper and legally correct.

Nevertheless, Appellants seek to obscure this obvious result in the case by the incantation of certain legal principles. Contriving a procrustean arrangement of the facts, Appellants then mechanically apply these legal principles to expose Aetna to liability for the Biener claims. It is a clear case of form over substance.

One principle is that an insurer has an absolute duty to defend its insureds. While Aetna does not generally dispute this rule, it seriously questions its applicability to the instant controversy. This rule exists to ensure that defendants in need of a defense are provided one by the carrier on risk. But the Greer Estate has no need of a defense since it, distinct and separate from Aetna, is absolutely judgment proof. Except for Aetna, suit against that estate is tantamount to suit against a nonentity. In seeking relief from defending the Estate, then, Aetna does no injustice to it. Aetna would, however, conserve its own and the court's resources by not defending an action in which no one but possibly an assetless estate can be held liable.

As opposed to the Estate, Aetna has a clear interest in the underlying indemnity action; that suit is essentially against Aetna, for the Estate has nothing to gain or lose. In prosaic terms, it could care less. Yet Aetna's interest is not in defending that action, but in having enforced its superior right to be free of liability to Security Insurance. If Aetna has no liability to Security Insurance, it obviously has no reason to defend an action, the only adverse result of which could be a judgment against an assetless estate. Significantly, relieving Aetna from liability in this declaratory judgment action actually amounts to a defense of the Estate anyway. If Aetna's nonliability to Appellants is declared, the Estate has been, in effect, successfully defended since, except for the Aetna policy, the Estate is closed. Hence, without Aetna, the Estate cannot be sued. S.C. Code Ann. § 21-15-640 (1976); Moultis v. Degen, 279 S.C. 1, 301 S.E.2d 554 (1983).

The second legal principle that Appellants inject into the dispute as conclusive is even more inapplicable: that an insurer cannot be subrogated against and, therefore, cannot seek indemnity from, its own insured. Again, Appellants are correct in their statement of the law. But Aetna has not, does not, and will not seek indemnity from the Greer Estate. Security Insurance may owe indemnity to Aetna, but Aetna agrees that the Estate qua Estate does not and cannot.

The inapplicability of this principle to this matter renders inapposite most of the cases cited in Appellant's brief. In Sherwood Trucking, Inc. v. Carolina Casualty Insurance Company, 552 F.2d 568 (4th Cir. 1977), a truck owned by Lawson was leased to Sherwood. Lawson agreed contractually to hold Sherwood harmless for any liability resulting from the actions of Lawson's drivers. While a Lawson employee was driving the leased truck, an accident occurred. Third parties injured in the accident sued, and Sherwood's insurer, Reserve, settled the suit. Reserve then attempted to recover from Lawson, who confessed judgment, and, eventually, Reserve proceeded against Lawson's insurer, Carolina Casualty.

The court specifically found that both the driver and Lawson were "insureds" under the Reserve policy issued to Sherwood and refused to hold that Lawson's insurance carrier, Carolina Casualty, was liable to Reserve. Although Reserve argued that Lawson was liable to it under the hold harmless agreement, the fourth circuit pointed out that the Carolina Casualty policy issued to Lawson specifically excluded any liability assumed under such a hold harmless agreement; Lawson might be liable, but not Carolina Casualty. Sherwood Trucking is thus completely inapplicable to a situation in which Security Insurance specifically certified its liability under its insured's hold harmless agreement.

The remainder of Sherwood Trucking is also inapplicable to the instant matter. It discusses the inability of an insurer, Reserve, to recover indemnity from its own insured, Lawson, for whom it paid a claim. In the instant case, however, Aetna has paid for injuries no money for which it has not already been reimbursed by the liable party, Security Insurance. Thus, Aetna has no interest in recovering indemnity from Greer or any other person arguably insured under the policy that Aetna issued to Hystron.

Security Insurance's concern that an insurer not seek indemnity from its own insured is ironic given the facts of the instant case. In the underlying indemnity action, Security Insurance, through Security Forces, seeks indemnity from the Greer Estate. Security Insurance's loss for which it claims indemnity occurred

when it reimbursed Aetna for the amount that Aetna paid for the Bieners' claims – claims that arose out of the operations of a Security Forces employee at Hystron. Such claims are precisely what Security Insurance agreed to be liable for. Thus, when Security Forces incurred its loss, it did so in compliance with its certification that it insured the risks arising from Security Forces' agreement to hold Hystron harmless for any claims arising as a result of the actions of Security Forces employees, one of whom was Mr. Greer. In reimbursing Aetna, then, Security Insurance was paying for exactly what it had insured against.

Moreover, Security Forces paid Security Insurance a premium so that Security Insurance on behalf of Security Forces would be liable for satisfying such claims as the Bieners'. Nevertheless, almost inconceivably, Security Insurance now claims the right to recover from Aetna, through the Estate, exactly what it earlier promised to pay.

Perhaps Appellants should re-read the cases they cited in their brief. In Builders and Manufacturers Mutual Casualty Company v. Preferred Automobile Insurance Company, 118 F.2d 118 (6th Cir. 1941), the case the fourth circuit relied upon in deciding Sherwood Trucking, Hummon was hauling freight in his own automobile, but doing so for the Buffalo and Ohio Transfer Company. Hummon collided with a car and injured its passengers, who sued the Transfer Company. The Transfer Company's insurer, Builder and Manufacturers Mutual Casualty, settled the suits. Mutual then sued Hummon and obtained a default judgment against him. Mutual's successors then sued Hummon and Hummon's insurer, Preferred Automobile Insurance Company, to recover the unsatisfied default judgment. On appeal from the district court's dismissal of this suit, the appellate court said that "when the Mutual Company settled the state suits [by the third-party passengers] by payment of the amounts agreed upon, it discharged its own primary liability, and cannot now recover the identical amount which it agreed in its contract of insurance to pay." Id. at 121. The court then continued:

> The Mutual Company paid its own liability for the thing against which it had directly insured the Transfer Company when the settlements were consummated. It was primarily liable under the policy, and made the payments either in recognition of its liability or as a volunteer.

Id. at 121-22.

Security Insurance stands in exactly the same situation as did the Mutual Company: it paid its own liability for the risk against which it insured, claims arising from the operations of Security Forces. It was liable not only because of the policy issued to Security Forces, but also because of the assurances that it gave to Hystron and, therefore, to Aetna. It may not now come into court and have these agreements abrogated so that it can argue that its position is the same as those of Carolina Casualty in Sherwood Trucking and Preferred Automobile in Builders and Manufacturers Mutual Casualty. While those cases are superficially appealing, they differ significantly on the subtle and crucial points for which Appellants seek to use them against Aetna.

Clearly, the circuit court considered Appellants' argument that Aetna has an absolute duty to defend the Estate. (Tr. 47.) That court, however, refused to accept Appellants' reasoning since it was inapplicable to the unique factual situation underlying this declaratory judgment action and because it failed to acknowledge the agreements and assurances of Security Forces and Security Insurance. As far as Appellants are concerned, the very existence of the Aetna policy is fortuitous. They have no right to seize serendipitously on the routine form language of that insurance contract and elevate it over the more carefully negotiated and specifically applicable contrary language that Hystron and Security Forces agreed would govern the precise situation that the unique facts of this case present.

Significantly, neither the Bieners nor the Greer Estate has any basis for objecting to the circuit court's disposition of this case. Objection to the enforcement of the contracts with Hystron comes only from Security Forces and Security Insurance. They would have the court ignore the agreements that they made with Hystron and blindly adhere to the routine language of the Aetna policy. Yet Security Forces and Security Insurance are the very parties that negotiated and agreed in those Hystron documents to hold Hystron harmless. They should not be allowed to disavow their own clear, contractual intentions so that they can fall under the more advantageous terms of an insurance contract to which they are not parties and the very existence of which really should not concern them. One can only wonder why Hystron negotiated for the hold harmless clause and for the insurance covenants if it intended to procure additional insurance that would negate those clauses.

The interest of Security Insurance in voiding the agreements with Hystron is apparent. The sole purpose in suing the Greer Estate is to have the courts of this State nullify the Hystron agreements so that Security Insurance can reach indirectly what the New York courts would not allow it to reach directly, the Aetna policy. Although in a case with different facts, the circuit court might have resolved the conflict between the language of the Aetna policy and that of the agreements with Hystron in a different way, the court's resolution of the instant dispute lay simply in having Security Forces and Security Insurance perform as they agreed to perform. Since Hystron, Security Forces, and Security Insurance clearly specified in contracts of their own making which of them would bear the liability that arises in this case, the circuit court, on the facts of this case, correctly rejected Appellants' argument that it should ignore those contracts and decide this dispute only on the basis of the Hystron-Aetna policy.

Security Insurance made certain promises covering the liability at issue in this case. It cannot now complain that its own promises bind it. Moreover, no court should negate those promises when by honoring them, it can, without offense to the Bieners or the Estate, place the liability precisely where Security Forces and Security Insurance contracted to have it placed.

B. Allowing Aetna To Be Liable to Security Insurance for the Claim for Which the New York Courts Held Security Insurance Liable to Aetna Creates a Circuity of Action and Unconstitutionally Undermines the Valid New York Judgment.

If Aetna can recover back from Appellants anything that they recover from Aetna through the Greer Estate, a circuity of action exists. Both the circuit court and the New York trial court recognized this possibility and refused to permit it. These courts correctly perceived the situation before this court.

Since the Aetna policy is the Estate's only arguable asset, judgment against the Estate is judgment against Aetna. Such a judgment, of course, would be in favor of Security Forces and Security Insurance. Aetna, however, has a New York judgment in its favor and against Appellants. Under it, Aetna has the right to be indemnified by Appellants for losses paid on the Biener claims. Thus, whatever the South Carolina courts may require Aetna to pay Appellants on these claims, Aetna can recover back from Appellants under the New York judgment. This creates a circuity of action, which the courts should not permit.

Appellants argue, however, that no circuity can exist since ultimate liability rests with the Estate against which Aetna can claim no right of indemnity. If the situation permitted liability to end with the Estate with no involvement by Aetna, Appellants might be correct. Appellants, however, neither desire that nor, legally, are they entitled to it at this point. They want liability placed on Aetna; suit against the Estate is just a convenient device to attain it. But if Aetna becomes again liable, it can invoke the New York judgment and seek relief thereunder. Thus, suit against the Estate provides only one more purgatory for this lengthy litigation. While Aetna cannot seek indemnity from the Estate, it can and will seek it again from Appellants.

Even so, Security Insurance argues that it "never has had its day in court against Greer." (Brief at 11.) If the situation were such that Aetna and the Estate had separate interests in this matter, Aetna might not be able to oppose Security Insurance's attempts to recover from the Estate, for assets other than the Aetna policy would be available and Aetna might have a duty to defend. In that situation, Security Insurance might be entitled to "its day in court against Greer." Presently, however, Aetna and the Estate's interests are the same. Security Insurance desires no "day in court against Greer." What it wants is a day in court against Aetna. But, if the result of Security Insurance's day in court against Aetna is a recovery against Aetna, a circuity of action has been created. For that reason, Appellants may not sue the Estate at this late date.

The New York judgment is also relevant to finality in another respect. The practical outcome of that judgment was that the Bieners received money from Aetna because of their claim arising from the operations of Security Forces at Hystron. In further compliance with the judgment, Aetna was reimbursed by Security Insurance, who agreed to be liable for such claims. (Tr. 37.) While the New York appellate court modified the judgment of the trial court by deleting from it "the limitations imposed on future actions derived from the fourth and fifth party actions" (Tr. 12), this modification changed in no way the judgment of the trial court that Aetna was entitled to be indemnified by Security Insurance for the amount that Aetna was ordered to pay the Biener family. Thus, Aetna, Hystron, Security Forces, and Security Insurance are all bound in the State of New York by a valid judgment rendered there, and that judgment places liability to Aetna on Security Insurance.

Under the "full faith and credit" clause of the United States Constitution, art. IV, section 1, that valid New York judgment has precisely the same effect in South Carolina as it does in New York. Whether the courts of this State agree with the judgment is irrelevant: when "a judgment rendered by a court having jurisdiction of the cause and the parties is challenged in another state," the courts in the other state are precluded from "any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." Milliken v. Meyer, 311 U.S. 457, 462 (1940). "Because there is a full faith and credit clause, a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into judgment." Magnolia Petroleum Company v. Hunt, 320 U.S. 430, 440-41 (1943) (both cases quoted in Hamilton v. Patterson, 236 S.C. 487, 492, 115 S.E.2d 68, 70 (1960)).

Nevertheless, Security Insurance, in using the Estate to recover from Aetna, attempts to do precisely that: challenge the validity of Aetna's right that ripened into judgment in the courts of New York. In the action underlying this one, Security Insurance, through Security Forces, seeks to undo the indemnification ordered by the New York courts by seeking reimbursement from Aetna of the money the New York court previously required that Security Insurance pay to Aetna. This is clearly unconstitutional. To paraphrase what the Supreme Court said in Magnolia Petroleum Company v. Hunt, 320 U.S. at 440-41, because there is a full faith and credit clause, Security Insurance, bound by the valid judgment of the courts of the State of New York, may not a second time challenge the validity of the right of Aetna, which right has ripened into a judgment in New York.

Security Insurance cannot deny that the sole reason for Security Forces' suit against the Greer Estate is to allow Security Insurance to recover from Aetna what the New York Court ordered Security Insurance to pay to Aetna. Thus, Security Insurance seeks to undo the valid judicial proceedings of the State of New York. This is precisely the evil that the full faith and credit clause was designed to prevent. If this Court does not apply the full faith and credit clause and declare that Aetna cannot be held liable to Security Insurance, the possibility exists that Security Insurance will succeed in nullifying the valid judicial proceedings of a sister state. The circuit court correctly held that this is unconstitutional.

Aetna, of course, is aware of Appellants' argument that the New York appellate decision leaves open the possibility of an

action against the Estate. This is correct and was necessary since that court lacked jurisdiction to bind the Estate. That court did not, however, say that Aetna was liable to Security Insurance through the Estate. It concluded the opposite, that Security Insurance is liable to Aetna.

In leaving open the possibility of suit against the Estate, the New York court did just that, it left open that possibility. It did not decide whether South Carolina's law on closed and reopened estates and on distributed and undistributed assets permitted it. It did hold, however, that Aetna was entitled to indemnity from Appellants. Conversely, then, Appellants may not seek indemnity from Aetna. Thus, if Appellants could at this point proceed against the Estate without drawing in Aetna, the New York courts would not object. But that is not possible. Therefore, suit against the Estate is suit against Aetna, and to permit recovery against Aetna is to nullify the precise judgment of the New York courts.

V. CONCLUSION

For the reasons stated above this Court should affirm the judgment or the circuit court and declare that neither Aetna nor, derivatively, the Estate, can be liable to Security Forces or its insurer, Security Insurance, in any action arising from the 1970 automobile accident.

Respectfully submitted,

RAINEY, BRITTON, GIBBES &
CLARKSON, P.A.

BY: N. Heyward Clarkson, III
C. Wade Cleveland

February 15, 1985

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY

HONORABLE JAMES B. STEPHEN, JUDGE

Aetna Casualty & Surety Company, a corporation; and Doris Geneva Greer, as Administratrix D.B.N.C.T.A. of the Estate of Charles Furman Greer, Deceased,

Respondents,

—vs—

Security Forces, Inc., and Security Insurance Company of Hartford,

Appellants.

PETITION FOR REHEARING

Opinion No. 0767

N. Heyward Clarkson, III
RAINEY, BRITTON, GIBBES & CLARKSON, P.A.
Attorneys for Respondents
330 E. Coffee Street
P.O. Box 10589
Greenville, SC 29603
Telephone: 803-271-9580

Other counsel of record are:

John E. Johnston, Brandford N. Martin and Gwendolyn G. Embler
LEATHERWOOD, WALKER, TODD & MANN, P.A.
217 E. Coffee Street
P.O. Box 2248
Greenville, SC 29601

The petitioners, Aetna Casualty & Surety Company, Inc. and Doris Geneva Greer, as Administratrix D.B.N.C.T.A. of the Estate of Charles Furman Greer, Deceased, would respectfully show unto the Court:

I

The petitioners do hereby petition the South Carolina Court of Appeals to rehear the above captioned appeal pursuant to Rule 17 of the Rules of Practice and Procedure for the Supreme Court of South Carolina.

II

The petitioners submit that the Court in its decision (Opinion No. 0767) filed August 4, 1986, overlooked or misapprehended the following points:

1. The Court overlooked the binding nature of the agreement between Hystron and Security Forces which provides that Security Forces and Security Insurance must bear the ultimate liability for the injuries arising in the 1970 automobile accident.

2. The Court overlooked the hold harmless clause contained in the agreement between Hystron and Security Forces which provides that Security Forces and Security Insurance must hold Hystron and the Greer estate harmless from all liability arising from the 1970 automobile accident.

3. The Court misapprehended the principle of insurance law which provides no right of subrogation in favor of the insurer against its own insured. This principle is not applicable to this case because Aetna does not seek subrogation or indemnity from the Greer estate.

4. The Court overlooked the fact that Aetna, by requiring Security Forces to honor it hold harmless agreement, is exercising its duty as an automobile liability insurance carrier to its insured and not nullifying this obligation.

5. The Court overlooked the fact that its holding would nullify the hold harmless agreement between Hystron and Security Forces and would allow Security Insurance to reach the Aetna policy indirectly when the New York court would not allow it to be reached directly.

6. The Court overlooked the fact that the Greer estate is closed and absolutely judgment proof; therefore, Aetna has no duty to defend the estate in an action brought by Security Forces seeking indemnity. The Court confused the fact that Security Forces may proceed with an action against the estate, but may not proceed in an action against Aetna.

7. The Court misapprehended the "full faith and credit" clause of the United States Constitution, Article IV, Section 1 when it inquired into the merits of the New York action, the logic of that decision, and the legal principles on which the New York judgment was based.

8. The Court overlooked the fact that its holding will necessarily result in a circular chain of recovery. The Court overlooked the fact that if Aetna is again required to pay any judgment obtained against the Greer estate, it will then seek indemnity pursuant to the New York court's holding, against Security Forces under the provision of the hold harmless agreement.

III

Because of the aforesaid reasons, the Court of Appeals should reconsider its decision recorded in Opinion No. 0767.

WHEREFORE, the petitioners pray that the Court rehear this case and reverse its prior ruling and affirm the lower court.

Respectfully submitted,

N. Heyward Clarkson, III
RAINEY, BRITTON, GIBBES
& CLARKSON, P.A.
Attorneys for Respondents
330 E. Coffee Street
P.O. Box 10589
Greenville, SC 29603
Telephone: 803-271-9580

August 13, 1986

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Aetna Casualty & Surety Company
a corporation; and Doris Geneva
D.B.N.C.T.A. of the Estate of
Charles Furman Greer, Deceased,

Petitioners,

vs.

Security Forces, Inc., and
Security Insurance Company
of Hartford,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

N. Heyward Clarkson, III
RAINEY, BRITTON, GIBBES
& CLARKSON, P.A.
330 East Coffee Street
Post Office Box 10589, F.S.
Greenville, S.C. 29603
(803) 271-9580

Other Counsel of Record are:

John E. Johnston, Gwendolyn G.
Embler and Bradford N. Martin
LEATHERWOOD, WALKER, TODD & MANN, P.A.
217 East Coffee Street
Post Office Box 2248
Greenville, South Carolina 29601

STATEMENT OF THE CASE

In July, 1970, Charles Furman Greer was an employee of Security Forces, Inc., which, by contractual arrangement, provided security services to Hystron Corporation located in Spartanburg County. In the contract for guard services, Security Forces agreed to hold Hystron harmless for any claims resulting from the operations of Security Forces and secured liability insurance for that purpose from Security Insurance Company.

On July 27, 1970, Hystron directed Greer to use a Hystron-owned automobile to drive a Hystron employee (Hans Biener) and his family to the airport. This was one of Greer's usual duties and he was performing pursuant to the contract between Security Forces and Hystron. On the way to the airport, the Hystron automobile ran into a bridge abutment. Mrs. Biener was killed and Mr. Biener and his children were injured. Mr. Greer also died as a result of the injuries received in the accident.

At the time of the accident Aetna had in effect an automobile liability insurance policy in which Hystron was the named insured and the automobile driven by Greer was listed as an insured vehicle on this policy.

Following institution of legal proceedings by the Biener family on account of the accident that occurred while Mr. Greer was performing his duties as a Security Forces employee, Hystron and Security Forces agreed to submit to the New York court the issue of which of them would be liable for the claims that the Bieners made. The New York court determined that the $450,000.00 for which Hystron and Security Forces had agreed to settle the Biener claims should be paid by Hystron's insurer, Aetna; and that Security Forces and its insurer, Security Insurance, should reimburse Aetna for the amount paid to the Bieners. Thus, Aetna paid to the Bieners the amount of the settlement, and Security Insurance reimbursed that amount to Aetna.

In Security Forces' indemnity action against the Greer Estate, the lawsuit that underlies this declaratory judgment action, Security Forces seeks to recover from the Estate precisely what the New York court ordered Security Forces and Security Insurance to pay to Aetna. Since the Greer Estate has been closed for many years, it presently has no assets except for the possibility that the Aetna insurance policy issued to Hystron constitutes one. Thus, the underlying indemnification lawsuit seeks reimbursement from Aetna, albeit through the Estate, of the same liability that the courts of the State of New York ordered Security Forces and Security Insurance to pay to Aetna.

On October 3, 1983, Security Forces, Inc. filed an action in the Court of Common Pleas for Spartanburg County against the Estate for indemnity based upon common law principles of indemnity between an employee and employer. The Aetna policy is the only undistributed asset of the Estate. That action is being held in abeyance pending the outcome of this appeal.

Summary judgment was granted to Plaintiffs by Order of The Honorable James B. Stephen. The Court of Appeals reversed the Order of Judge Stephen in its opinion dated August 4, 1986.

QUESTIONS PRESENTED

I. Did the Court of Appeals err by not giving full faith and credit to a New York decree barring this action in violation of the "full faith and credit" clause of the United States Constitution, Article IV, Section I?

II. (A) Did the Court of Appeals err by voiding a hold harmless clause freely and voluntarily entered into between Hystron and Security Forces?

(B) Did the Court of Appeals err by not giving effect to the intention of the parties when it refused to uphold a valid contract between Hystron and Security Forces?

(C) Did the Court of Appeals err by its holding that Aetna, as Hystron's subrogee, is not entitled to the protection of the hold harmless clause?

III. Did the Court of Appeals misapprehend and wrongfully apply the principle of insurance law which provides no right of subrogation in favor of the insurer against its own insured?

ARGUMENT

I. Did the Court of Appeals err by not giving full faith and credit to a New York decree barring this action in violation of the "full faith and credit" clause of the United States Constitution, Article IV, Section 1?

The practical outcome of the New York judgment was that the Bieners received money from Aetna because of their claim arising from the operations of Security Forces at Hystron, and Aetna was reimbursed by Security Insu ance, who agreed to be liable for such claims. (Tr. 37.) While the New York appellate court modified the judgment of the trial court by deleting from it "the limitations imposed on future actions derived from the fourth and fifth party actions) (Tr. 12), this modification changed in no way the judgment of the trial court that Aetna was entitled to be indemnified by Security Insurance for the amount that Aetna was ordered to pay the Biener family. Thus, Aetna, Hystron, Security Forces, and Security Insurance are all bound in the State of New York by a valid judgment rendered there, and that judgment places liability to Aetna on Security Insurance.

Under the "full faith and credit" clause of the United States Constitution, art. IV, section 1, that valid New York judgment has precisely the same effect in South Carolina as it does in New York. Whether the courts of this State agree with the judgment is irrelevant: when "a judgment rendered by a court having jurisdiction of the cause and the parties is challenged in another state," the courts in the other state are precluded from "any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." Milliken v. Meyer, 311 U.S. 457, 462 (1940). "Because there is a full faith and credit clause, a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into judgment." Magnolia Petroleum Company v. Hunt, 320 U.S. 430, 440-41 (1943) (both cases quoted in Hamilton v. Patterson, 236 S.C. 487, 492, 115 S.E.2d 68, 70 (1960)).

Nevertheless, Security Insurance, in using the Estate to recover from Aetna, attempts to do precisely that: challenge the validity of Aetna's right that ripened into judgment in the courts of New York. In the action underlying this one, Security Insurance, through Security Forces, seeks to undo the indemnification ordered by the New York courts by seeking reimbursement from Aetna of the money the New York court previously required that Security Insurance pay to Aetna. This is clearly unconstitutional.

The sole reason for Security Forces' suit against the Greer Estate is undo the valid judicial proceedings of the State of New York. This is precisely the evil that the full faith and credit clause was designed to prevent. If this Court does not apply the full faith and credit clause and declare that Aetna cannot be held liable to Security Insurance, Security Insurance will succeed in nullifying the valid judicial proceedings of a sister state.

II. (A) Did the Court of Appeals err by voiding a hold harmless clause freely and voluntarily extend into between Hystron and Security Forces?

The contractual agreements of the parties in this sixteen-year-old dispute clearly express their intentions. The obvious intent of the parties is that the ultimate liability for claims arising from the 1970 automobile accident lies with Security Forces and its insurer, Security Insurance Company. In these agreements Security Forces unequivocally assumed liability for the Bieners' claims and precludes Aetna's liability to them, either through Hystron or through the Greer Estate.

Security Forces has no interest in recovering from anyone because of the accident. It has lost nothing and was unaware for weeks that Security Insurance had even brought, in the name of Security Forces, the indemnification action against the Estate. Clearly, Security Insurance, who paid for the Biener claims under the New York judgment, is the party interested in recovering what the New York court ordered it to pay to Aetna. Equally clearly, Security Insurance desires no judgment against the Greer Estate for the Estate has no assets – no assets except, possibly, the Aetna Insurance policy that Hystron purchased. Were it not for that policy, Security Insurance would not bring suit against an estate without assets and closed for many years. Thus, the parties with an actual interest in this action and the underlying indemnification suit are the two insurers, Aetna and Security Insurance.

Yet there are the same insurers that the New York court dealt with when, on the basis of the contractual agreements pertaining to these actions, it ordered Security Insurance to reimburse Aetna for the Biener claims. The South Carolina Court of Appeals examined the same contracts and should have concluded that liability lay with Security Insurance rather than with Aetna. Consequently, Aetna, and, derivatively the Greer Estate, could not be placed in a position of possible liability to Security Insurance; that would be a useless exercise since the agreements precluded their liability to Security Insurance under the facts of this dispute.

II. (B) Did the Court of Appeals err by not giving effect to the intention of the parties when it refused to uphold a valid contract between Hystron and Security Forces?

In interpreting contracts, the most basic guidelines for a court are to respect the relationships of the parties and to effectuate their intentions. E.g., Thomas-McCain, Inc. v. Siter, 268 S.C. 193, 232 S.E.2d 728, 729 (1977). In the present action, there are three separate indications that the parties intended that Security Insurance, through Security Forces, bear liability for the Biener claims. First, Security Forces promised Hystron that it would "defend and hold [it] harmless . . . in connection with any and all claims arising as a result of operations performed by [Security Forces] under [the] contract." (Tr. 30.) Second, Security Forces agreed to "obtain, pay for, and keep in force, general liability insurance for [b]odily injury to a person . . . caused by any operations of Security Forces, Incorporated, for which it may be liable . . . " and automobile liability insurance "for all vehicles owned, hired or used . . . in the business of Security Forces, Inc. (Tr. 29.)

Finally, in compliance with its covenant "to furnish certificates evidencing that such insurance is in effect" (Tr. 29), Security Forces had its insurer present such a certificate to Hystron. In that certificate, Security Insurance notified Hystron that it had in effect policies insuring Security Force's operations at Hystron. Among the coverages certified to was "Comprehensive (combined General and Automobile)." (Tr. 32) Moreover, Security Insurance specifically assured Hystron that Security Forces would "defend and hold harmless [Hystron] in connection with any and all claims arising as a result of operations performed by [Security Forces] under" the contract. (Tr. 32-33). Since it had issued to Security Forces an insurance policy covering the liability Security Forces assumed in its contract with Hystron, Security Insurance was obviously in a position to make to Hystron this assurance that Hystron would be held harmless.

Because of this series of specific promises and assurances by both Security Forces and Security Insurance, the Court of Appeals should have found that Security Forces and/or its insurer, Security Insurance, had agreed to be liable for claims such as those made by the Bieners that arose from the operations of Security Forces at Hystron. However, if Aetna is placed in a position of possible liability to Security Insurance for the Biener claims, these con-

tractural provisions, which so clearly place liability on Security Insurance, are nullified. Neither Security Forces nor Security Insurance needed to spend the time required to negotiate and prepare the contracts if, when the risks they sought to allocate and the liability they sought to place actually came into existence, their intentions were to be ignored and Aetna is held liable.

II. (C) Did the Court of Appeals err by its holding that Aetna, as Hystron's subrogee, is not entitled to the protection of the hold harmless clause?

In legal terms, Aetna, as the subrogee of Hystron, is entitled to assert whatever rights Hystron has against Security Forces and Security Insurance, both of whom assured Hystron that it would be held harmless for claims arising from such Security Forces operations as Greer's accident in 1970. Calvert Fire Insurance Company v. James, 236 S.C. 431, 435, 114 S.E.2d 832, 835 (1960). In this declaratory judgment action, Aetna seeks only to assert those rights; since Hystron is entitled to indemnity from Security Insurance, Aetna is also. Otherwise, Aetna is deprived of its rights as Hystron's subrogee.

Contrary to the Court of Appeals' suggestions "[l]egal subrogation is not dependent upon contract," but is an equitable doctrine that flows from:

> principles of natural justice; its purpose is to require the ultimate discharge of a debt by the person who in equity and good conscience in the light of the actions and relationships of the parties.

Id. Aetna asks nothing more than adherence to these principles. Since Security Forces and Security Insurance agreed to be liable for precisely the sort of claims the Bieners asserted, "equity and good conscience" demand that they bear this liability and not shift it to Aetna by use of the employer-employee fiction or by any other means. This is simply inequitable under the facts of this case.

Moreover, Aetna is clearly a third-party beneficiary of these Hystron/Security Forces/Security Insurance agreements, and is entitled to have them enforced. Wise v. Picow, 232 S.C. 237, 244, 101 S.E.2d 651, 655 (1958). Since Hystron had insurance on the automobile Greer was driving, the only reason for its demanding from Security Forces the hold harmless and insurance covenants agreed upon was to relieve its own insurer, Aetna, of liability

when the person giving rise to a claim was a Security Forces employee. In other words, as long as Aetna insured Hystron, Hystron had no need of the hold harmless and insurance covenants. But since Hystron demanded this additional protection anyway, it can only have been for the benefit of Aetna.

Thus, the contractual agreements in this case are clear. They reveal an effort to allocate the risk of an accident such as the one that occurred in 1970 while Greer was driving a Hystron vehicle. The outcome of that allocation of risks is that Security Forces, and Security Insurance, would bear ultimate liability.

III. Did the Court of Appeals misapprehend and wrongfully apply the principle of insurance law which provides no right of subrogation in favor of the insurer against its own insured?

The Court of Appeals clearly erred when it held:

> Our decision rests also on the established principle of insurance law that "n[o] right of subrogation can arise in favor of the insurer against its owned insured, since by definition subrogation arises only with respect to rights of the insured against third persons to whom the insurer owes no duty.

This principle of law is patently inapplicable to the facts of this case. Aetna (the insurer), has not, does not, and will not seek indemnity from the Greer Estate (its insured).

The inapplicability of this principle to this matter renders inapposite the cases cited by the Court of Appeals. In Sherwood Trucking, Inc. v. Carolina Casualty Insurance Company, 552 F.2d 568 (4th Cir. 1977), a truck owned by Lawson was leased to Sherwood. Lawson agreed contractually to hold Sherwood harmless for any liability resulting from the actions of Lawson's drivers. While a Lawson employee was driving the leased truck, an accident occurred. Third parties injured in the accident sued, and Sherwood's insurer, Reserve, settled the suit. Reserve then attempted to recover from Lawson who confessed judgment, and, eventually, Reserve proceeded against Lawson's insurer, Carolina Casualty.

The court specifically found that both the driver and Lawson were "insureds" under the Reserve policy issued to Sherwood and refused to hold that Lawsons's insurance carrier, Carolina Casualty, was liable to Reserve. Although Reserve argued that Lawson was liable to it under the hold harmless agreement, the fourth circuit pointed out that the Carolina Casualty policy issued to Lawson

specifically excluded any liability assumed under such a hold harmless agreement; Lawson might be liable, but not Carolina Casualty. Sherwood Trucking is thus completely inapplicable to a situation in which Security Insurance specifically certified its liability under its insured's hold harmless agreement.

In the instant case Aetna has paid for injuries no money for which it has not already been reimbursed by the liable party, Security Insurance. Thus, Aetna has no interest in recovering indemnity from Greer or any other person arguably insured under the policy that Aetna issued to Hystron.

Security Insurance's concern that an insurer not seek indemnity from its own insured is ironic given the facts of the instant case. In the underlying indemnity action, Security Insurance, through Security Forces, seeks indemnity from the Greer Estate. Security Insurance's loss for which it claims indemnity occurred when it reimbursed Aetna for the amount that Aetna paid for the Bieners' claims – that arose out of the operations of a Security Forces employee at Hystron. Such claims are precisely what Security Insurance agreed to be liable for. Thus, when Security Forces incurred its loss, it did so in compliance with its certification that it insured the risks arising from Security Forces' agreement to hold Hystron harmless for any claims arising as a result of the actions of Security Forces employees, one of whom was Mr. Greer. In reimbursing Aetna, then, Security Insurance was paying for exactly what it had insured against.

Respectfully submitted,

N. Heyward Clarkson, III
Rainey, Britton, Gibbes
& Clarkson, P.A.
Post Office Box 10589
Greenville, S.C. 29603
(803) 271-9580

Attorneys for the Petitioners

September 18, 1986.

Supreme Court, U.S.
FILED
APR 11 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1530

In The

Supreme Court of the United States

October Term, 1986

AETNA CASUALTY AND SURETY COMPANY, A CORPORATION; AND DORIS GENEVA GREER, AS ADMINISTRATRIX DBNCTA OF THE ESTATE OF CHARLES FURMAN GREER, DECEASED,

Petitioners,

v.

SECURITY FORCES, INC. AND SECURITY INSURANCE COMPANY OF HARTFORD,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENT SECURITY FORCES' BRIEF IN OPPOSITION

BRADFORD N. MARTIN
Counsel of Record
LEATHERWOOD, WALKER, TODD & MANN
217 East Coffee Street
Post Office Box 87
Greenville, South Carolina 29602
(803) 242-6440

JOHN E. JOHNSTON
GWENDOLYN G. EMBLER
LEATHERWOOD, WALKER, TODD & MANN
217 East Coffee Street
Post Office Box 87
Greenville, South Carolina 29602
(803) 242-6440

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTIONS PRESENTED

Whether the unanimous South Carolina Appellate Courts (affirmed by the Supreme Court by denying a writ of certiorari) erred in holding:

(1) That the New York judgment has neither *res judicata* nor collateral estoppel effect over the proceedings in South Carolina because the Appellate Division expressly deleted from the trial court's order its attempted resolution of both the claims and issues involved in the litigation in South Carolina?

(2) There can be no *res judicata* effect for at least the reason that the New York judgment does not finally determine the merits of the claim now being raised in the South Carolina litigation?

(3) There is no collateral estoppel effect because the issues involved in South Carolina were not decided by the New York courts?

TABLE OF CONTENTS

Page(s)

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

STATEMENT OF THE CASE 2

I. The Parties And The Nature Of The Claim 2

II. The Proceedings Below And The Issues For Review 4

REASONS FOR DENYING THE WRIT 6

I. There Is No Special And Important Reason To Review The South Carolina Court Order 6

A. The South Carolina Actions Do Not Involve The Same Parties 6

B. The New York Action Did Not Involve The Identical Issues In The South Carolina Actions 8

CONCLUSION 8

TABLE OF AUTHORITIES

Page(s)

CASES:

Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guaranty Association, 455 U.S. 691 (1982) 7

OPINIONS BELOW

Respondents have two objections with Petitioners' presentation of the opinions below. First, they cite and copy an "Amended Order of the Circuit Court of Spartanburg County, South Carolina" which appears on pages 26-43 of its Appendix.

The original Order by the lower court was dated July 20, 1984. Notice of Appeal to the South Carolina Supreme Court was served upon opposing counsel on August 2, 1984. An Amended Order was signed by the lower court judge on August 22, 1984, twenty days after he had lost jurisdiction of the case. Respondents objected to the inclusion of this Oruer on appeal, and the South Carolina Supreme Court remanded the issue of its inclusion to the original lower court judge. On October 31, 1984, he issued his order settling the record which excluded the Amended Order due to his lack of jurisdiction to issue it once the case was on appeal to the Supreme Court. Thus, the Amended Order was not considered by the South Carolina appellate courts and Petitioners did not object to the lower court's omission. Inclusion of this Order at this stage is inappropriate and unfounded.

Second, the Petitioners have added a footnote to the New York lower court order that was not a part of the original order (p.55 n.1). This gratuitous footnote also misstates the holding of the South Carolina lower court. That court did not rule that "Greer's estate could not be liable because the Aetna policy is its only undistributed asset". The court relied upon various grounds, but the fact that the insurance policy was the only undistributed asset was not one.

STATEMENT OF CASE

I. The Parties And The Nature Of The Claim

It is important to understand the players in order to determine whether the Full Faith and Credit Clause of the Constitution is involved in this matter. In July of 1970, Security Forces and Hystron Corporation had in effect a contract under which Security Forces provided Hystron with guard services to protect Hystron's property in Spartanburg County. A Hystron superior asked a Security Forces guard (Greer) to drive a Hystron executive, Mr. Biener (and his family) to the airport in a car owned by Hystron and insured by Aetna. The Aetna insurance policy made any permissive user an additional insured as long as he was operating an owned automobile. There is no question that Mr. Greer was a permissive user and was operating a car that was listed on the Aetna policy. While in route to the airport, Greer negligently drove the car into a bridge abutment killing Mr. Biener's wife and injuring other members of the family.

The Bieners brought suit in the State of New York against Hystron for injury and death. Hystron joined Security Forces as a Third-Party Defendant in that suit, seeking contractual indemnity from Security Forces based upon their agreement for guard services. Security Forces then attempted to join Greer's estate as a Fourth-Party Defendant seeking implied indemnity from their employee for its vicarious liability, if any, to Hystron. The estate, in turn, sought to join Aetna as a Fifth-Party Defendant seeking indemnity (as an insured) from Aetna for its liability, if any, to Security Forces. A New York trial court ruled it did not have personal jurisdiction over the estate. (Petition for Writ of Certiorari page 58) Nevertheless,

the trial court's order set forth limits upon the right of Security Forces to seek indemnity from the estate, and the estate to seek indemnity from Aetna.

The parties to the action stipulated damages to be $450,000.00. The New York trial court ruled that Hystron was directly liable to the Bieners and that Security Forces was obligated to indemnify Hystron for Hystron's liability to the Bieners under the hold harmless provision of the contract for guard services. On appeal, the Appellate Division of the New York Supreme Court, in a 1980 decision, affirmed these aspects of the trial court's order. Without explanation, however, the Appellate Division modified the order to delete the limitation imposed on any future actions relating to the Fourth and Fifth party actions against the estate and Aetna respectively. (Petition for Writ of Certiorari page 61)

In October of 1983 Security Forces filed an action in the Court of Common Pleas, Spartanburg County, South Carolina, against the estate of its former employee, Greer. The action sought implied indemnity based on the right of a master to maintain a suit against a servant where alleged misconduct of the servant has given rise to vicarious liability of the master. This was precisely the Fourth party action the New York trial court ruled it did not have jurisdiction over, and the appellate court ruled could not be limited.

Aetna and the Administratrix of Greer's estate then brought this declaratory judgment action against Security Forces and Security Insurance (not a party to the underlying proceeding) seeking an order that neither Aetna nor the estate could be liable to Security Forces in connection with its pending suit against the estate.

———o———

II. The Proceedings Below And The Issues For Review

The lower court granted summary judgment in favor of Petitioners, focusing upon Aetna's right to be subrogated to the rights of Hystron, its insured. Petitioners raised the issue of Full Faith and Credit, and stated in their Petition to this Court that the lower court held that the Full Faith and Credit Clause required the South Carolina courts to follow the New York court's ruling. (Petition for Writ of Certiorari, p. 10). However, a review of the lower court's order shows otherwise.

The lower court stated that Petitioner's argument with regard to Full Faith and Credit was "appealing", but that "it cannot completely agree with it". (Appendix to Petition for Writ of Certiorari, p. 23). The Circuit Judge went on to state:

> "... Clearly, if the opinion of the New York trial court were the final word of the New York courts, the plaintiffs' arguments would be correct and the full faith and credit clause would alone compel this court to grant the declaratory relief that the Plaintiffs' requested. Because the New York appellate court modified the judgment of the trial court, however, this court is unable to determine the exact effect that the New York appellate court intended its judgment to have. It may have modified the judgment solely because of its lack of jurisdiction over the fourth and fifth party defendants or it may have intended some other result. Rather than speculate on such matters, this Court prefers to rely for its decision on the clear language of the agreements discussed above and that this court feels adequately dispose of the plaintiffs' motion."

> ". . . But this court cannot say with certainty that that doctrine (Full Faith and Credit) alone disposes of the Plaintiff's motion since the precise effect of the New York judgment is not clear . . ." (Petition for Writ of Certiorari, pp. 23-24).

Petitioners again raised the Full Faith and Credit argument before the Court of Appeals of South Carolina. The unanimous court rejected the argument. They held that the Full Faith and Credit Clause of the Federal Constitution does require courts of one state to give such effect to a judgment of the sister state as it would have in the sister state. Hence, they focused on whether the New York courts would accord this previous judgment preclusive effect over either the declaratory judgment action of Aetna or the pending suit against the Greer estate. The Court then stated that under the Full Faith and Credit Clause the courts extend both *res judicata* and collateral estoppel effect to state court judgments.

The unanimous court agreed that the New York judgment had neither *res judicata* nor collateral estoppel effect over the proceeding in South Carolina when the Appellate Division of New York expressly deleted from the trial court's order its attempted resolution of both the claim and litigation involved in South Carolina. The court concluded that there could be no *res judicata* effect for ". . . at least the reason that the New York judgment does not finally determine the merits of the claim now being resolved in this litigation . . . ". (Appendix to Petition for Writ of Certiorari, p. 43) They further held that there was no collateral estoppel effect on the issues involved here since they were not decided by the New York courts. *Id.* Instead, the Appellate Division's ". . . deletation of

aspects of the trial court's order left the issues unadjudicated . . . ". *Id.*

In summary, whether or not Security Forces can be allowed to seek recovery against its servant for his alleged misconduct has never been decided. The parties to the underlying lawsuit, Security Forces and the estate of Greer, have never had their day in Court. The New York courts expressly declined to limit such an action. Therefore, the issue for review is whether the South Carolina courts have failed to give Full Faith and Credit to a sister state's ruling which, on its face, allows the action to proceed.

REASONS FOR DENYING THE WRIT

I. There Is No Special And Important Reason To Review The South Carolina Court Order.

A. The South Carolina actions do not involve the same parties.

Petitioners cloak themselves in the Full Faith and Credit Clause in requesting this Court to review the unanimous decision of the South Carolina appellate courts. They boldly state that the New York court holdings involve the same parties and identical issues. (Petition for Writ of Certiorari, p. 11) This is not true, since the New York court itself held that it had no jurisdiction over the Estate nor the Estate claim against Aetna (The Fourth and Fifth Party actions) (Petition for Writ of Certiorari, p. 58). The parties are not the same.

The only case Petitioners cite as authority for their position (other than cases citing black letter law) is that

of *Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guaranty Association,* 455 U.S. 691 (1982). However, the facts of that case are vastly different from the facts of this case.

In *Underwriters,* the North Carolina Association appeared in Indiana to seek a determination of its rights to the $100,000 deposit. The Indiana court expressly ruled that it had personal jurisdiction over the Association (through its intervention) and subject matter jurisdiction over the funds. The Association had at that time the right to object to subject matter jurisdiction, but declined. This Court, per Justice Marshall, held that Full Faith and Credit applied—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment. (455 U.S. at 706).

Unlike *Underwriters,* the South Carolina court's review of the New York decision did not reveal a record which fully and fairly considered the question of jurisdiction over Greer or Greer's right to be insured by Aetna under the insurance policy. On the contrary, a review of the New York court order showed that both the lower and appellate court held that no jurisdiction existed, and therefore there would be no limitations on future actions. Therefore, Petitioner's statement that the New York courts had jurisdiction over the parties before it to determine Security Forces' right to indemnification is inaccurate. The Estate of Greer and Greer's subsequent request to be insured by Aetna were not before the New York courts.

B. The New York action did not involve the identical issues in the South Carolina actions.

Aetna issued an insurance policy insuring Hystron for automobiles identified on the policy. The New York action for negligence was against an Aetna insured (Hystron) in which the New York court held Hystron liable. The New York court further held that Hystron, based on a contract with Security Forces, could be indemnified by Security Forces based on this contract. Aetna also insured a permissive user, Mr. Greer. The issue of whether or not he was liable to his employer and whether or not Aetna should defend him was not decided in New York. The lower court in New York attempted to decide this issue, but it was as reversed by the Appellate Division. The Appellate Division's Order expressly stated that there would be no limitations on Security Force's right to seek indemnification from the Estate of Greer, and that there would be no limintations upon the Estate of Greer's right to request Aetna to defend it and provide coverage under its separate duty to an additional insured (Petition for Writ of Certiorari, p. 61). The South Carolina cause of action for employer-employee indemnity is entirely different and distinct from the New York cause of action for negligence and contractual indemnity between Hystron and Security.

CONCLUSION

Respondents are only seeking their day in court which the New York courts allowed them to do back in 1980. In order for the Full Faith and Credit Clause to apply, there

must be a controlling decision from the original state court. This particular state court judgment has neither *res judicata* nor collateral estoppel effect over the proceedings in South Carolina because the Appellate Division of New York expressly deleted from the trial court's order its attempt at resolution of both claims and issues involved. There can be no *res judicata* effect for at least the reason the New York judgment does not finally determine the merits of whether Security Forces can be indemnified for the negligence of its employee. Further, there can be no *res judicata* effect because the New York judgment does not finally determine whether the Estate of Greer should be defended by its insurer and provided coverage. Finally, there is no collateral estoppel effect because the issues involved in South Carolina were simply not decided by the New York courts.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Bradford N. Martin
Counsel of Record

Leatherwood, Walker, Todd & Mann
217 East Coffee Street
Post Office Box 87
Greenville, South Carolina 29602
(803) 242-6440

John E. Johnston
Gwendolyn G. Embler
Leatherwood, Walker, Todd & Mann
217 East Coffee Street
Post Office Box 87
Greenville, South Carolina 29602
(803) 242-6440